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## TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

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No. 20

NATIONAL LABOR RELATIONS BOARD, PETITIONER

NEWPORT NEWS SHIPBUILDING & DRY DOCK COMPANY

---

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE FOURTH CIRCUIT

---

PETITION FOR CERTIORARI FILED MARCH 22, 1939  
CERTIORARI GRANTED APRIL 24, 1939

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 20

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

NEWPORT NEWS SHIPBUILDING & DRY DOCK COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE FOURTH CIRCUIT

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BEFORE THE NATIONAL LABOR RELATIONS  
BOARD, 5TH REGION

Case No. V-C-82

IN THE MATTER OF NEWPORT NEWS SHIPBUILDING & DRY DOCK CO.  
AND INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF  
AMERICA*Charge*

Filed June 12, 1937

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Newport News Shipbuilding and Dry Dock Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2) and (3) of said Act, in that

1. The respondent on or about March 3, 1937, discharged and refused to reinstate and still refuses to reinstate John M. Darling, Jr.; and on or about May 24, 1937, discharged and refused to reinstate and still refuses to reinstate J. G. Royer and Alfred H. Smith; and on or about May 31, 1937, discharged and refused to reinstate and still refuses to reinstate W. H. Bell; and on or about June 1, 1937, discharged and refused to reinstate and still refuses to reinstate M. L. Anderson and E. B. Wright; and on or about June 7, 1937, discharged and refused to reinstate and still refuses to reinstate Jesse Dillon; all employees of the respondent at the

2 Newport News plant, because they joined and assisted a labor organization of their own choosing and engaged in concerted activities with fellow employees for collective bargaining and other mutual aid and protection.

2. The respondent its servants, or agents are dominating and interfering with the employees' right of self-organization by sponsoring, dominating, interfering with and lending financial support to a so-called labor organization known as Representation of Employees in the plant of Newport News Shipbuilding and Dry Dock Company, Newport News, Virginia.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

(S) PHILIP H. VAN GELDER,

Philip H. Van Gelder,

*Secretary-Treas., Industrial Union of Marine  
and Shipbuilding Workers of America,  
2332 Broadway, Camden, N. J.*

Subscribed and sworn to before me this 12th day of June 1937.

(S) BENNET F. SCHAUFFLER,

*Regional Director.*

3 BEFORE THE NATIONAL LABOR RELATIONS BOARD, FIFTH  
REGION

[Title omitted.]

*Complaint*

It having been charged by the Industrial Union of Marine and Shipbuilding Workers of America that Newport News Shipbuilding and Dry Dock Company, hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board, by its Regional Director for the Fifth Region as agent of the National Labor Relations Board, designated by National Labor Relations Board Rules and Regulations, Series 1, as amended, hereby alleges the following:

1. The respondent is, and has been for a long period of time, and is now, and has continuously been, engaged in the construction, overhaul, and repair of ships at its plant in Newport News, Virginia.

2. The respondent in the course and conduct of its business causes and has continuously caused a considerable portion of the raw materials used in the manufacture of its product, and on its overhaul and repair of ships, to be purchased and transported in interstate commerce from and through States of the United States other than the State of Virginia, and causes and has continuously caused a considerable portion of the products manufactured by it, and of the ships overhauled or repaired by it, to be transported in interstate commerce from its plant in Virginia; into and through States of the United States other than the State of Virginia, and in commerce with foreign countries.

3. Industrial Union of Marine and Shipbuilding Workers of America, hereinafter referred to as the union, is a labor organization as defined in Section 2, Subdivision 5 of said Act.

4. The respondent while engaged at the Newport News plant, as described above, did, on or about the 3rd day of March 1937, discharge, and refused, and still refuses to reinstate John M. Darling, Jr.; did, on or about the 24th day of May 1937, discharge, and refused, and still refuses to reinstate J. G. Royer and Alfred H. Smith; did, on or about the 31st day of May 1937, discharge, and refused, and still refuses to reinstate W. H. Bell; did, on or about the 1st day of June 1937, discharge, and refused, and still refuses to reinstate M. L. Anderson and E. B. Wright; did, on or about the 7th day of June 1937, discharge, and refused, and still refuses to reinstate Jesse Dillon, all, and each of them, being employees of the respondent at its Newport News plant.

5. The respondent discharged, and refuses to reinstate the above-named individuals, and each of them, for that the above-named individuals, and each of them, joined and assisted the labor organiza-



tion referred to above as the Industrial Union of Marine and Shipbuilding Workers of America, and engaged in concerted activities with other employees in the Newport News plant of the respondent, for the purpose of collective bargaining and other mutual aid and protection.

5 6. By the discharge of and refusal to reinstate the above-named individuals, and each of them, as above set forth, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of the above-named individuals, and each of them, and did discourage and is discouraging membership in the union, and did thereby engage in and is engaging in unfair labor practices within the meaning of Section 8, Subdivision 3, of said Act.

7. The respondent by its officers and agents did during the year 1927 cause to be put into force and effect at its Newport News plant a plan known as "Representation of Employees." Said plan constitutes a labor organization within the meaning of Section 2, Subdivision 5 of said Act.

8. The respondent, by its officers and agents, while operating as described above, in June 1927, and on dates thereafter down to and including the date of the filing of this Complaint, did foster, encourage, sponsor, dominate, and interfere with the formation, enlistment of membership, and administration of the said labor organization known as "Representation of Employees," and did contribute financial and other support thereto and did thereby engage and is engaging in unfair labor practices within the meaning of Section 8, Subdivision 2 of said Act.

9. By all of said acts, and each of them, enumerated in paragraphs 4, 5, and 6 above; and by all said acts, and each of them, enumerated in paragraphs 7 and 8 above, the respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by all of said acts and each of them did engage in and is engaging  
6 in unfair labor practices within the meaning of Section 8, Subdivision 1 of said Act.

10. The current labor dispute caused by the aforesaid unfair labor practices did burden and obstruct, and continues to burden and obstruct, commerce among the several States and with foreign countries, and the free flow thereof; did interfere and continues to interfere with the execution of orders, sale, distribution, and shipments of the products of the respondent in interstate and foreign commerce; did cause and/or tends to cause the diversion of production and the diversion of commerce thereof from and among the several States of the United States and between said States and foreign countries.

11. The activities of the respondent set forth above occurring in connection with the operations of the respondent have a close, inti-



mate, and substantial relation to trade, traffic, and commerce among the several States and with foreign countries and tend to lead to labor disputes burdening and obstructing said commerce and free flow of said commerce.

12. The aforesaid acts of the respondent enumerated in paragraphs 4, 5, 6, 7, 8, 9, 10, and 11 above, constitute unfair labor practices affecting commerce within the meaning of Section 8, Subdivisions 1, 2, and 3, and Section 2, Subdivisions 6 and 7 of said Act.

Wherefore the National Labor Relations Board on this 18th day of June 1937, issues its complaint against the Newport News Shipbuilding and Dry Dock Company, respondent herein.

### *Notice of hearing*

Please take notice that on the 8th day of July 1937, at 10:00 o'clock in the forenoon, in the Corporation Court, Municipal Building, Newport News, Virginia, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by the Board in accordance with said Rules and Regulations, Series 1, as amended, Article IV, Section 3, and Article II, Section 23, on the allegations set forth in the complaint attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Fifth Region, with offices at 603 U. S. Appraisers' Stores Building, Baltimore, Maryland, acting in this matter as the agent of the National Labor Relations Board, an answer to the attached complaint on or before the 29th day of June 1937.

Enclosed herewith for your information is a copy of the Rules and Regulations, Series 1, as amended, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In witness whereof the National Labor Relations Board has caused this, its complaint and notice of hearing to be signed by the Regional Director for the Fifth Region on the 18th day of June 1937.

(S) BENNET F. SCHAUFFLER,  
*Regional Director*

9 . . . BEFORE THE NATIONAL LABOR RELATIONS BOARD, FIFTH REGION

[Title omitted.]

*Answer of Newport News Shipbuilding and Dry Dock Company*

The Newport News Shipbuilding and Dry Dock Company, above named respondent (hereinafter called the Shipyard), with its counsel, waiving any motions heretofore made that these proceedings should be dismissed for lack of jurisdiction in the Board to hold or conduct

the same to be held at any time for the purpose of determining whether or not the Shipyard has engaged in or is engaging in any so-called unfair labor practices under the National Labor Relations Act, Public No. 198, 74th Congress, approved July 5, 1935, and that it is engaged in interstate or foreign commerce, and reserving all its rights to object further to said jurisdiction and to object and make any motions at any stage of these proceedings in respect of any provisions of the said National Labor Relations Act or in respect of any illegalities, invalidities, or insufficiencies in these proceedings or in the document purporting to be a "complaint" herein (hereinafter called complaint) which has heretofore been delivered to 10 the Shipyard by the National Labor Relations Board, files its answer to the complaint and alleges as follows:

(1) For a long period of time the Shipyard has been continuously engaged in the designing and building of ships, which always has constituted and still constitutes for the most part its business. Incident thereto, it has from time to time performed repair work on such completed vessels as may come to its shipyard for the purpose of having such repairs made. Occasionally, the Shipyard has overhauled vessels. As thus amplified and explained, the Shipyard admits the allegations of paragraph 1 of the complaint.

(2) In the course and conduct of its business, the Shipyard has caused and has continuously caused a considerable portion of the raw materials used in its business, as said business is explained in paragraph (1) above, to be purchased and transported in interstate commerce from and through states of the United States other than the State of Virginia into the State of Virginia, but the Shipyard denies that, as alleged in paragraph 2 of the complaint, it causes and has continuously caused a considerable portion of the products manufactured by it and of the ships overhauled or repaired by it to be transported in interstate commerce from its shipyard in Virginia into and through states of the United States other than the State of Virginia, and in commerce with foreign countries, and the Shipyard denies that a considerable portion of the products manufactured by it or that any of the ships overhauled or repaired by it are transported in interstate commerce from its shipyard in Virginia into and through other states of the United States or in commerce with foreign countries, and the Shipyard alleges that the repair and overhaul of vessels by it constitutes a very minor part of the Shipyard's business.

11 (3) The Shipyard neither admits nor denies the allegations of paragraph 3 of the complaint, but it believes said allegations to be true.

(4) The Shipyard denies the allegations contained in paragraph 4 of the complaint except that it admits that on or about the dates specified in paragraph 4 of the complaint it did lay off the men therein named for reasons hereinafter set forth in paragraph (5) of this answer, reserving to itself then and thereafter liberty of action with respect to re-employing said men, either or any of them.

(5) The Shipyard denies that, as charged in paragraph 5 of the complaint, it discharged and refuses to reinstate the men named in paragraph 4 of the complaint for that they and each of them joined and assisted the labor organization known as the "Industrial Union of Marine and Shipbuilding Workers of America" and engaged in concerted activities with other employees in the shipyard for the purpose of collective bargaining and other mutual aid and protection except that it does admit that it laid off said men, as stated in paragraph (4) of this answer, reserving to itself then and thereafter liberty of action with respect to re-employing the said men, either or any of them.

The Shipyard alleges that on the contrary it did not know at the time of said respective lay-offs that any of said men were members of said Industrial Union and does not now know (except as presently to be explained) that any of said men are or were when laid off members of said Industrial Union.

"The said Darling was an unskilled workman employed as a helper and a comparatively new employee. He was laid off as a part of a general decrease in force, because of lack of work in said ship-  
12 yard for which he was suited. Regardless of any labor affiliation which the said Darling may or may not have had, his general demeanor, conduct, and manner of work made him an undesirable employee of the shipyard."

The said Bell, Anderson, Wright, Royer, Smith, and Dillon were laid off because of a general reduction of force among the employees of said Shipyard which became necessary because of the lack of or the condition of the work at said shipyard.

(6) The Shipyard denies each and every of the allegations of paragraph 6 of said complaint.

(7) The Shipyard denies each and every of the allegations of paragraph 7 of said complaint except that it admits that in cooperation with its employees in 1927 it aided in putting into force and effect at its shipyard a plan of employee representation known as "Representation of Employees." The Shipyard alleges that said plan of representation of employees is an independent labor organization to which its employees belong.

(8) The Shipyard denies each and every of the allegations of paragraph 8 of said complaint except that it admits that it did lend its moral support and encouragement to the formation and continuation of said plan known as "Representation of Employees."

(9) The Shipyard denies each and every of the allegations made in paragraph 9 of the complaint.

(10) The Shipyard denies each and every of the allegations made in paragraph 10 of the complaint and alleges that there is no labor dispute, current or otherwise, between the Shipyard and its employees, or any of them.

13 (11) The Shipyard denies each and every of the allegations made in paragraph 11 of the complaint and alleges that at the present time and for a number of years last past its business

has consisted principally and to a very large extent wholly of building vessels for the United States Navy, a department of the United States Government, and alleges that said vessels are not used as instrumentalities of commerce or in connection with such instrumentalities and alleges that such other work as respondent may do, as alleged in said complaint, constitutes a very minor part of the Shipyard's operations and is not commerce within the meaning of said Act and does not burden or obstruct or affect commerce or the free flow thereof within the meaning of said Act.

(12) The Shipyard denies each and every of the allegations of paragraph 12 of said complaint.

Further answering the complaint, the Shipyard alleges:

(13) The Shipyard has never expressed or intimated to its employees, or any of them, and it is not a fact, that their tenure of employment or any term or condition of their employment shall depend upon their joining or refusing to join any labor organization. The Shipyard is operated as an "open shop" and the Shipyard believes and therefore alleges that many of its employees have belonged and do now belong to labor organizations affiliated with the American Federation of Labor and that perhaps some few belong to the said Industrial Union.

The Shipyard is advised and believes and therefore alleges that many of its employees are members of no labor organization other than said plan of "Representative of Employees."

14 Wherefore, the Newport News Shipbuilding and Dry Dock Company prays that the complaint be dismissed.

NEWPORT NEWS SHIPBUILDING &  
DRY DOCK COMPANY,

By: J. B. WOODWARD, JR.,

*General Manager.*

SKINNER & MARSHALL, p. q.

FRED H. SKINNER.

*Post Office Address: Newport News, Virginia.*

*[Duly sworn to by J. B. Woodward, Jr.; jurat omitted in printing.]*

15 BEFORE THE NATIONAL LABOR RELATIONS BOARD, FIFTH REGION

*[Title omitted.]*

*Motion for leave to intervene*

Pursuant to Section 10 (B) of a National Labor Relations Act, the Employees Representative Committee of the Newport News Shipbuilding and Dry Dock Company, a Labor Organization as defined in Section 2, Subdivision 5 of said Act, comes and files this, its written motion to be permitted to intervene in the above matter of the Newport News Shipbuilding and Dry Dock Company and Industrial Union of Marine and Shipbuilding Workers of America,



being designated as Case No. V-C-82 before the 5th Regional Director of the National Labor Relations Board.

16 A. The Employees Representative Committee of the Newport News Shipbuilding and Dry Dock Company were duly elected on June 15, 1937, for a term of one year to represent all of the employees of the said Shipyard. The election was held on a regular working day on which said Shipyard was operating at its usual normal full-time rate. Without any domination, interference, intimidation, or coercion upon the part of the Shipyard in which election 5,718 voted out of a total of 6,300 eligible voters present on election day, or 90.80 per cent of the eligible voters that were at work on the day of election. There were elected 43 representatives in accordance with the plan of representation of employees, as revised as of December 8, 1936. The name, address, and Department represented by each member of the committee is hereto attached, marked Exhibit A, and prayed to be read and considered as a part of this petition. Blair Blanton was elected Chairman, and I. C. Wilkins Secretary at the Organization meeting of the Employees Representative Committee immediately after the election.

B. That the plan of representation of employees was first adopted in June 1927, and has been in effect continuously since that time. An Employees Representative Committee as provided in said plan has existed since June 1927. That the plan has been subject to revision July 1, 1929, October 5, 1931, May 2, 1934, December 8, 1936, June 30, 1937. The plan as adopted and revised as of May 20, 1937, effective June 30, 1937, is hereto attached, marked Exhibit B, and prayed to be considered and taken as a part of this Motion.

17 C. Paragraphs 7 and 8 of the complaint charge that the said Shipyard in 1927 caused to be put into effect and force a plan known as "Representation of Employees." The said plan constituted a Labor Organization within the meaning of Section 2, Subdivision 5 of the said Act, and that the said Shipyard did foster, encourage, sponsor, dominate, and interfere with the formation and enlistment of membership and administration of the said Labor Organization known as "Representation of Employees," and did contribute financial and other support thereto and did engage and is engaging in unfair labor practices within the meaning of Section 8, Subdivision 2 of said Act. The effect of these charges in the complaint, if found to exist by the Board, the Regional Director, or Trial Examiner, would eliminate or seriously impair the usefulness of the Employees Representative Committee in the right to self-organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining, or other mutual aid or protection. Because of this fact the Petitioner is interested and entitled to file this Motion.

D. The Petitioner now moves that the complaint be dismissed for the reason that the Newport News Shipbuilding and Dry Dock Company is not engaged in Interstate commerce. Nor does the business of the said Shipyard directly affect such commerce, nor does

it burden or obstruct such commerce or the free flow thereof. And for the further reason that no labor dispute affecting the said Shipyard is in existence at this time, and therefore the National Labor Relations Board, its agents or agencies, are without jurisdiction.

The Petitioner, without waiving the motion to dismiss the case for lack of jurisdiction by the said Board, answers the complaint in this case: §

1. The Petitioner admits allegations contained in paragraph One (1) of the complaint as being partly true and further alleges and avers in addition thereto that the principle business of the said Shipyard is the designing and construction of ships, and in designing and construction of turbines.

18 2. For lack of knowledge the Petitioner denies each and every allegation contained in paragraph Two (2) of the complaint.

3. For lack of knowledge the Petitioner denies each and every allegation contained in paragraph Three (3) of the said complaint.

4. For lack of knowledge the Petitioner denies each and every allegation contained in Paragraph Four (4) of the complaint.

5. For lack of knowledge the Petitioner denies each and every allegation contained in paragraph Five (5) of the complaint.

6. For lack of knowledge the Petitioner denies each and every allegation contained in paragraph Six (6) of the complaint.

7. The Petitioner denies each and every allegation contained in paragraph Seven (7) of the complaint, except the allegation that the plan of representation of employees constitutes a Labor Organization within the meaning of Section 2, Subdivision 5 of said Act.

Further, with respect to paragraph Seven (7) of the complaint, the Petitioner avers that the plan known as "Representation of Employees" was put into effect and force at the instance of the employees of the said Shipyard and as set out in the preamble: "In order to give the employees of the Company a voice in regards to conditions under which they labor, and to provide an orderly and expeditious procedure for the preventing and adjustment of any further differences, and to anticipate the problems of continuous employment, a method of representation of employees is to be established."

19 8. The Petitioner denies each and every allegation contained in paragraph Eight (8) of the complaint.

Further, with respect to paragraph Eight (8) of the complaint, the Petitioner avers that the said Shipyard does not foster, encourage, sponsor, dominate and interfere with the formation and enlistment of membership and administration of the said Organization known as the "Representation of Employees" or "Employees Representative Committee." The Petitioner further avers that the said Shipyard does not contribute financial and other support to the said Employees Representative Committee or to the Organization, the Organization for the representation of employees.



That this Organization is elected by the employees who have been on the regular payroll for a period of sixty days prior to the date fixed for nomination, except that no Company officer or supervisor from leading-man up is eligible to be elected or to vote in the election.

9. The Petitioner denies each and every allegation contained in paragraph Nine (9) of the complaint.

10. The Petitioner denies each and every allegation contained in paragraph Ten (10) of the complaint.

Further with respect to paragraph 10 of the complaint, the Petitioner avers that no current labor dispute exists. And that while a number of the employees of the said Shipyard have been laid off from time to time from March 1, 1937, this lay-off has been occasioned by lack of work rather than for any other reason.

11. The Petitioner denies each and every allegation contained in paragraph Eleven (11) of the complaint.

12. The Petitioner denies each and every allegation contained in paragraph Twelve (12) of the complaint.

20 Wherefor, further, the Petitioner respectfully moves the National Labor Relations Board that the complaint be dismissed.

EMPLOYEES' REPRESENTATIVE COMMITTEE,

By: I. C. WILKINS, *Secretary.*

FRANK A. KEARNEY,

*Attorney for the Petitioner.*

[Duly sworn to by I. C. Wilkins; jurat omitted in printing.]

29 BEFORE THE NATIONAL LABOR RELATIONS BOARD, FIFTH REGION

Case No. V-C-82

IN THE MATTER OF NEWPORT NEWS SHIPBUILDING & DRYDOCK COMPANY AND INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA

*Statement of evidence*

AUDITORIUM OF THE JOHN W. DANIEL SCHOOL BUILDING,

NEWPORT NEWS, VIRGINIA,

*Monday, August 30, 1937.*

The above-entitled matter came on for hearing, pursuant to notice, at 9:30 o'clock a. m.

Before JAMES C. PARADISE, Trial Examiner.

*Appearances*

Jacob Blum, Baltimore, Maryland, on behalf of the National Labor Relations Board.

Frank A. Kearney, Phoebus, Virginia, on behalf of Employees Representing Group of the Newport News Shipbuilding and Drydock Company.

Fred H. Skinner, John Marshall, and Charles C. Berkeley, First National Bank Building, Newport News, Virginia, on behalf of the Newport News Shipbuilding and Drydock Company.

96 . PHILIP H. VAN GELDER was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. BLUM:

Q. Where do you live, Mr. Van Gelder?

A. Camden, New Jersey.

Q. What is your occupation?

A. I am Secretary-Treasurer of the Industrial Union of Marine and Shipbuilding Workers of America.

Q. What is the Industrial Union of Marine and Shipbuilding Workers of America?

A. It is a labor union.

Q. Is it affiliated with any other body?

A. It is affiliated with the Committee for Industrial Organization.

Q. Is that commonly known as the C. I. O.?

A. Yes, sir.

Q. Where are the home offices of the Industrial Union of Marine and Shipbuilding Workers of America?

A. Camden.

Q. New Jersey?

A. Yes, sir.

222 JESSE D. DILLON, a witness called by and on behalf of the National Labor Relations Board, and having been first duly sworn, testified as follows:

Direct examination by Mr. BLUM:

Q. What is your name?

A. Jesse D. Dillon.

Q. Where do you live, Mr. Dillon?

A. 2523 Richmond Avenue, Hampton, Virginia.

225 Q. What were you doing at the time of your lay-off. Incidentally, what date was it that you were laid off?

A. I was laid off June 7th, 9:30 that morning, 1937.

226 By Mr. SKINNER:

Q. Mr. Dillon, do you recall when you went to Anthill for a job—to get a job there?

A. Yes, sir.

Q. Do you recall seeing a telegram to the du Pont people from the Newport News Shipbuilding & Drydock Company recommending you for a job?

A. I remember two, sir.

Q. Two telegrams.

A. Two telegrams, one recommending me for a job and the other with my Social Security number attached.

257 WILLIAM H. BELL, a witness called by and on behalf of the National Labor Relations Board, and having been first duly sworn, testified as follows:

Direct examination by Mr. BLUM:

Q. What is your full name?

A. William Herbert Bell.

Q. Where do you live?

A. 1010 Twenty-seventh Street, Newport News.

Q. Were you ever an employee of the Newport News Shipbuilding and Drydock Company?

A. Yes, sir.

Q. When did you start work with that company?

A. I wrote the Newport News Steamship and Drydock Company for a job in Georgia. My home was in Georgia. I wrote them from Georgia. I wrote for a job, enclosing my references, in 1929, the early part of 1929, and I got a letter from Mr. John Nessler—signed by Mr. Nessler.

Q. Asking you to report to work?

A. He told me to be in Newport News along about May 15th, 1929, and I would be given a job.

Q. Were you here on May 15, 1929?

A. I was.

Q. Were you put to work?

A. Yes, sir.

260 Q. Who is Mr. Sheldon?

A. Quarter man in charge of the electrical work on the "Boise," under Mr. Evans. All the other leading men at that time was under Mr. Sheldon. All the leading men and all the quarter men or supervisors were under the supervision of Mr. Sheldon. They were standing there catching the men as they come by, laying them off. The reason I stopped, to be right frank with you, was because I noticed every man that was laid off that morning belonged to the C. I. O.—I had signed them up personally myself—every single man they laid off that morning, with the exception of one man, and he was late in getting up there.

Mr. SKINNER. What morning was this?

Mr. BLUM. May 31st.

By Mr. BLUM:

Q. Is that what you said?

A. Yes.

267 Q. When did you become a member of this Industrial Union of Marine and Shipbuilding Workers?

A. March 26, 1937.

277 Q. When you left the company, did you go any place else to get a job?

A. Yes, sir.

Q. Where did you go?

279 Q. How soon after you left the shipyard did you get your first job with the Old Dominion Electric Company?

A. I got my first job about two weeks after that.

Q. Were you out of work completely during two weeks?

A. Yes, sir.

Q. Did you make any money at all?

A. No, sir.

Q. How much did you earn on the job with the Old Dominion Electric Company?

A. I made 90 cents an hour in possibly two weeks' work.

Q. How many hours a week?

A. 40 hours.

Q. 40 hours a week for two weeks?

A. Yes, sir.

Q. After that job was finished, did you get any other kind of work?

A. I went to Hopewell. I tried to get a job. I failed to get one. While I was there—I understood through reliable sources that the firm there wanted me and was going to put me to work, so I went there with that understanding.

Q. What company was that?

A. The E. I. du Pont Company.

Q. In Hopewell?

A. In Amphyll.

Q. You were talking about Hopewell.

280 A. I mean Amphyll. If I said Hopewell I was wrong. I went in there and I went out to the plant that morning and I went in the office right close to 9 o'clock and I went back in there—first the employees' manager asked all of those that had been sent for to come into the office.

Q. Before you get to that point; how long after you had finished your job for the Old Dominion Electric Company was it when you went over there to the du Pont Company?

A. To be frank with you, I had not finished with the Old Dominion Company.

Q. Was it during that two weeks?

A. Yes, but I made it all right with them. He told me that if I could get a steady job, to get it.

Q. You were the point where the man said that all who had an appointment were to come into the office.

A. Yes, sir.

Q. Take up the matter from there.

A. I went in with 18 or 20 of us, I guess—we went in there. There was a desk—his desk was sitting just like this desk is here (indicating).

Q. You mean the Trial Examiner's desk, do you?

A. Yes, sir. There was a door right along here (indicating).

Q. How many feet would that be?

A. Almost right up against the door; the space about eight  
281 inches between the desk and the door. I went in this back room, this other little room there, and I sat down at the desk that was not occupied, and turned around facing the Examiner, or facing the employment manager, and he had interviewed one or two, and I was awaiting my time. One of his clerks came in, and he said, "The Newport News Steamship and Drydock Company is calling you." He said, "Well, I will take it right here." Well, when he said that—when I heard that, naturally, I commenced to listen. The first thing he said was, "E. B. Wright."

Then there was "E. C. Wright". Then finally he got it right, and it was E. B. Wright, because that was a Mr. Wright, a friend of mine that was laid off the day after I was. Naturally, I got interested right there. I walked right up to the door and laid my hand on the man's shoulder. He turned his back to me, telephoning, like this (indicating), taking notes, and he says, "The next man you mentioned after you got Mr. Wright out"—he wanted to know if it was Melvin Anderson working there. That was another one of my friends.

Q. Who was asking that?

A. Whoever it was calling from the Newport News Steamship and Drydock Company.

Q. The person on the end of the line from the Newport News Shipbuilding and Drydock Company was asking the man,  
282 where you were?

A. The employment manager for the du Pont Company.

Q. And you heard the other end of the conversation coming from Newport News, did you?

A. Part of it, yes.

Q. How could you hear it?

A. Take a telephone, to a certain extent, it is like a radio. You can hear a certain distance. I don't mean to say distinctly, and every bit of the conversation—I could not hear it all, but I did hear enough of it to know what the conversation was all about.

Q. You heard the man at the Newport News end ask the man where you were sitting if E. B. Wright was working there? Is that right?

A. Absolutely.

Q. And if Anderson was working there?

A. Yes, sir.

Q. And who else?

A. Jesse Dillon.

Q. Dillon?

A. Yes, sir.

Q. Will you repeat what happened?



A. He made a note of these three men's names and told whoever was talking—he says, “I will have to look up my records to find out whether they are working here or not.” He says, “I can’t tell you right away but I will look them up and call you back,” and to me—I couldn’t understand it all, but the man said—I heard “C. I. O.” very distinctly.

By Mr. MARSHALL:

Q. What is that?

A. I heard through the telephone “C. I. O.” very distinctly.

By Mr. BLUM:

Q. Which end of the telephone was saying that?

A. This Newport News end. I was hearing it through the receiver. I was getting as close to the man as I possibly could get without attracting attention. There was nobody in the office but this employment manager at the time. I heard the word “agitators” and the man scratched down on his pad “agitators.” He wrote “agitators” right down on his pad. I was looking over his shoulder reading it. Then after he got through with that he went on to ask him, did he need any more men up there, what departments, and asked him why the electricians they had up there, the biggest majority of them, had been laid off, and the employment manager informed them that he thought it was because they were not familiar with his type of work; most of his work was construction work of rigid conduits; and the man sent up by them was not capable of doing the job.

Q. You mean the man sent up from Newport News—

A. By the employment office in Newport News.

Q. By the employment office in Newport News?

284 A. Yes.

Q. Were not capable of doing the job?

A. Yes.

Q. Was he referring to Anderson and Wright and Dillon at that time?

A. No, sir. They was not sent up by the Newport News—

Q. They were referring to the other people who had been sent there, were they?

A. Yes, sir.

Q. Did you get a job with the du Pont Company?

Mr. MARSHALL. If Mr. Blum has finished asking questions relative to this telephone conversation I should like to make a motion. Are you through, Mr. Blum?

Mr. BLUM. Yes.

Mr. MARSHALL. I should like to move that all the questions and answers relating to this telephone conversation be stricken from the record. According to the evidence that has been produced nobody has shown who was talking from the other end. Nobody has shown



that it was connected with the Newport News Shipbuilding and Drydock Company. Nobody has shown anything as to who the man was, or what his official capacity, if any, was. The witness has stated himself that he only heard part of the conversation, and I think that the Examiner will agree that, in all fairness, and according to 285 all rules of evidence, that unless he was close enough to hear the full conversation and to give the full purport of that conversation, that it could not be accepted as evidence. So we ask that the complete line of testimony and questions be stricken from the record.

Trial Examiner PARADISE. Do you wish to say anything with reference to that motion, Mr. Blum?

Mr. BLUM. Yes; I do. I think that the testimony is relevant as a factual matter in the case, as a conversation which this man actually heard, and which was definitely identified with the Newport News Shipbuilding and Drydock Company. The statement of the witness was that the clerk announced openly, "The Newport News Shipbuilding and Drydock Company is calling." And the manager said, "I will take it right here." Obviously, under those circumstances it was almost impossible for anybody else other than a supervisory official to be calling. The witness has been frank enough to say that he did not hear the entire conversation; and he repeated only what he did hear; and what he did hear has a bearing on this particular case.

I feel that, under those circumstances, the evidence is relevant in this type of proceeding.

Mr. MARSHALL. I should like to answer that, if you will permit me, Mr. Examiner.

Trial Examiner PARADISE. Yes.

286 Mr. MARSHALL. I think that even my friend, Mr. Blum, who has had considerable experience, to which he has referred on several occasions, does not seriously contend that this ought to be evidence. You will take judicial cognizance of the fact that there are many thousands of people working in the Newport News Shipbuilding and Drydock Company, and just who may have made any such telephone communication as that, nobody knows. There is nothing in the evidence to show, in the slightest degree, who did, or who that man was, and you know, and Mr. Blum knows, that in order for any conversation of that kind to have any bearing on this case it must have come from somebody in some capacity. That absolutely has not been shown, and it certainly is not the purpose of this hearing to go into evidence of that nature, where there is no pertinent effect—no connection whatsoever, and simply surmise or accept everything that the witness has said, and every statement that Mr. Blum has made in his argument.

Trial Examiner PARADISE. I think, from the context of the conversation, that whatever this witness had overheard it may be fairly assumed that the person who was speaking to the employment man

in the du Pont plant from the Newport News Shipbuilding Company was a person in some authority in the latter company, in view of the fact there was a discussion about men who had been sent up by the Newport News Shipbuilding and Drydock Company, and why they had not been kept by the du Pont Company. It may be assumed that the du Pont employment manager would not have engaged in such a conversation and in giving an explanation to a workman in the Newport News Drydock and Shipbuilding Company. I think the matter testified to is relevant and pertinent. I will deny your motion to strike it.

Mr. MARSHALL. We except to that ruling.

Mr. BERKELEY. Somebody else may have done that.

Trial Examiner PARADISE. I have made my ruling.

311 Q. You testified you talked with Mr. Evans?

A. On the morning I was fired. He is not a quartermen. He is assistant foreman.

Q. He is assistant foreman of the electrical department?

A. Yes, sir.

312 Q. You testified you came in with quite a group of other men?

A. What is that?

Q. You approached Mr. Evans along with several other men?

A. No. He told me to wait. He told me he wanted to see me before I came on the ship.

Q. Did you come in with those men?

A. No, sir.

Q. Did you come in by yourself?

A. What? We were standing out in front of the electric shack on the pier. There wasn't any in or out to it. We were standing out on the pier in front of the electric shack. There is a checking board up there.

Q. About what time was that?

A. Just before seven o'clock in the morning.

Q. You said, "We were standing there."

A. I was standing there. I expect more were standing there; yes, sir.

Q. Who was there?

A. To tell you the truth I do not recall all the men's names that were standing there.

Q. Who do you recall?

A. I know Mr. Harris was standing there.

Q. What Harris?

A. I do not know what his initials are.

Q. Working in the electrical department?

313 A. Yes, sir.

Q. Who else?

A. Mr. Shelton, Mr. Evans, and the other men did not know them by their names because—there were men standing there and there

were men getting off and I did not know the men personally or otherwise.

Q. Had you ever had any connection with them?

A. Nothing more than signing them up in the Union.

Q. You signed them up in the Union?

A. Yes, sir; the biggest part of them.

Q. You do not know who they were?

A. I do not know what their names were.

Q. Do you know anything about them?

A. No; I do not know anything about them only they were working in the shipyard. That is all I know about them. They were working on the ship there.

Q. Can you find out who they were?

A. Can I?

Q. Yes.

A. I do not know whether I could.

Q. What is that?

A. No; I could not, unless I looked at the shipyard records.

Q. Could you look at the Union records and find out? If Mr. Darling makes available to you the Union records and shows you the cards of the men you yourself joined, can you pick out the ones that were there?

314 The WITNESS. By the names on there? No, sir; I could not pick them out.

By Mr. MARSHALL:

Q. Do you know them?

A. I know the card I filled out. That is the only way I could pick them out.

Trial Examiner PARADISE. You say if you looked at the cards and the Union records, the Union membership cards, you could not by looking at those cards identify the men you say were laid off that day, is that right?

The WITNESS. Identify them by their face? I could identify the cards of these men I put in.

316 Trial Examiner PARADISE. Just a minute. Let counsel examine you for the purpose of finding out how you can identify the people you saw laid off. Do not volunteer any statements.

By Mr. MARSHALL:

Q. How many men did you enlist in the Union yourself?

A. I cannot say, I do not know the exact number. I did not keep any tab of it.

Q. About how many?

A. Oh, one hundred or more.

Q. How many?

A. One hundred or more.

Q. You yourself enlisted a hundred or more?

317 A. Yes, sir.

Q. Filled out the application cards?

A. That is right.

Q. Do you know those men that you enlisted?

A. Some of them I do and some of them I do not. I took them in the departments, all departments, electricians were one.

Q. You testified you worked in the electrical department for quite a few years?

A. Yes, sir.

Q. You certainly know the men that you enlisted in the electrical department?

A. Oh, no. There is men in there I never saw before in my life, until I enlisted them.

Q. You certainly know the men that you enlisted in the union who worked in the electrical department?

A. No, sir. I just stated there is men in there I never saw before in my life until I signed them up.

Q. You identify these men by their appearance?

A. Identify them by their appearance?

Q. You did not know their names, but you saw them at the time they were laid off?

A. Yes, sir.

Q. You knew they were men you enlisted in the union?

A. Yes, sir.

318 Q. What kind of appearance did they have?

A. I could not answer that question.

Q. What do you mean, you could not answer it?

A. By appearance—they just look like men. I saw them on the job, but what their names were and where they lived and so forth and so on, I have no idea or nothing about it.

Q. What characteristics about their appearance enabled you to know that you had enlisted them?

A. Seeing them on the ships, seeing them checking on the ships at our check box, and seeing them laid off and hearing their numbers called. I was going more by their numbers than I was by their names.

Q. Would you know them if you saw them today?

A. Some of them I would recognize. I imagine I would recognize all of them if I saw them; yes, sir.

Q. Let me ask you this question—

A. Maybe I would and maybe I would not.

Q. How many men did you see Mr. Evans lay off there that you had enlisted in the C. I. O.?

A. To tell you the truth I did not count them, but there were several of them.

Q. What do you mean by several?

A. A dozen or more.

Q. Well, a dozen or more. Do you mean 12 or 13?

A. I will not state a definite amount because that I do not know.

Q. Were there as many as twenty?

A. I could not tell you.

Q. Were there as many as a hundred?

A. No; there were not as many as a hundred.

Q. Were there as many as 25?

A. I could not say because I did not count them. I did not count them.

Q. You say there were not as many as a hundred?

A. Well, I know there were not as many as a hundred men at the check box.

Q. Were there more than ten?

A. I would not say there was or was not. I did not count them. There was around, somewhere around twelve, ten, fourteen, maybe sixteen. I am not saying definitely, but somewhere between I should judge ten and twenty.

Q. Well, that is all right.

A. That is not definite. That is just a guess.

Q. You have narrowed it down to that point. You say you recognized these men as men you signed in the Union?

A. Yes, sir.

Q. In what way were you able to recognize them?

A. Well, naturally, when you see a man on the ship and see a man working who is on the ship, and working, you recognize him going on and off the ship. I have talked to them. I associate with my fellow workmen as much as possible. Some of those men on there I had helped out with their work.

Mr. MARSHALL. I do not think that is an answer to the question.

Trial Examiner PARADISE. Do not argue with the witness. Please ask him questions.

Mr. MARSHALL. What is that?

Trial Examiner PARADISE. I say, do not argue with the witness.

Mr. MARSHALL. Do you consider I was arguing with the witness?

Trial Examiner PARADISE. Yes.

By Mr. MARSHALL:

Q. What characteristics enabled you to notice these men?

A. Just by knowing them by their appearance, that is all.

Q. What about their appearance—

Mr. BLUM. I want to interpose an objection at this point. Do we have to go into that again?

Trial Examiner PARADISE. I would like to know whether counsel thinks there is any given single physical characteristic about these men that should have enabled the witness to identify them?

Mr. MARSHALL. My observation is most of us have some characteristics and facial appearance and what we wear—

321 Trial Examiner PARADISE. Do I understand you want the witness to describe the men so that he can tell you what about them enabled him to identify them?



Mr. MARSHALL. I think I have asked that question pretty close to twenty times.

Trial Examiner PARADISE. I think so. I think the witness has answered it rather fully. But I will let you ask it once more to see whether we can get a more precise answer.

Mr. BLUM. May I object at this time if you do not get an answer?

Trial Examiner PARADISE. Yes.

Mr. MARSHALL. Well, what is the answer?

Trial Examiner PARADISE. Let us have the reporter repeat the question.

(The last question was read as follows: "What about their appearance——")

By Mr. MARSHALL:

Q. You have testified that you identified them by their appearance?

A. Yes, sir.

Q. What about their appearance that enabled you to identify them as the specific men that you enlisted in this specific union?

A. Because I had just signed them up a day or two before, then they were laid off; and I recognized them as the same men.

322 Q. How were you able to recognize them?

A. By just the appearance of their faces.

Q. Of their faces?

A. Yes, sir.

Q. What about their faces enabled you to recognize them?

Mr. BLUM. I think that has gone far enough.

The Witness. I do not know as——

Trial Examiner PARADISE. Objection sustained.

Mr. MARSHALL. Mr. Examiner, I wish the record would show that this witness has testified that on this day he was laid off——

Trial Examiner PARADISE. You need not rehearse it.

Mr. MARSHALL. Do you object to my finishing the statement? If you do, I will stop.

Trial Examiner PARADISE. I do not object to your making a statement. I object to your rehearsing the testimony of the witness needlessly. I have it clearly in mind and the record shows what it is.

Mr. MARSHALL. As I understand it, I have asked the question and an objection has been made.

Trial Examiner PARADISE. Yes.

Mr. MARSHALL. You have ruled in favor of the objection.

Trial Examiner PARADISE. That is right.

323 Mr. MARSHALL. I am trying to state in the record why I think the witness should testify to it and what I expect to prove by the witness's testimony.

Trial Examiner PARADISE. All right. Proceed.

Mr. MARSHALL. I would like for the record to show that this witness testified that on the morning he was laid off he saw Mr. Evans, assistant foreman of the electrical department, lay off immediately.



prior to the time he, Mr. Bell, was laid off, somewhere between ten and twenty men; that he recognized some of these men as being men he had enlisted in the C. I. O. or in this specific union; that the witness stated he recognized them by their faces, although he did not know their names; that the witness was asked what about their faces enabled him to recognize them, being the only way now that we are able to identify those men; that the witness was further asked if there was any other way he could identify them; that we asked these questions because they are very pertinent to this charge and if what this witness states is correct, the Assistant Foreman was deliberately laying off men belonging to this specific Union; that we are entitled to have any evidence available from this witness which might enable us to identify these specific men; that it was with this purpose in mind the questions which have been asked were asked. It was for the purpose of enabling us to identify these men that the questions were asked.

Trial Examiner PARADISE. Frankly, Mr. Counsel, I think  
324 that very question was asked at least four times.

Mr. MARSHALL. And no answer.

325 Trial Examiner PARADISE. Proceed.

By Mr. MARSHALL:

Q. As I understand it, you testified that you thought that if you saw these men you would again recognize them?

A. I think I would.

Q. You would recognize the ones you enlisted in the C. I. O. if they were brought here?

A. No; I would not recognize all of them; no, sir; not by a long ways.

Q. Out of that 10 or 20?

A. I might recognize some of them by their features. Their features might come back to me. I don't say I could or could not.

Q. You knew at that time that they belonged to the C. I. O., did you?

A. I signed them up myself.

Q. Were all of the men in that group that was laid off members of the C. I. O.?

A. No; I would not say that all of that group laid off that morning belonged to the C. I. O., but the group I went in to talk to there who did belong to the C. I. O., every one of them.

Q. The group you went in—

A. The group standing there, the men I stood talking to—I don't say every man laid off that morning belonged to the

326 C. I. O.

Q. Was this group that you are talking about—were any of them laid off?

A. They were all laid off.

Q. Who were they?

A. I don't know what their names are.

Q. You were talking to them?

A. Yes, sir.

Q. They worked in the electrical department?

A. Yes, sir.

Q. Did you come in contact with them much in your work?

A. Not much; no, sir.

Q. Did you see them daily?

A. At noon time—other fellows would come and contact them at noon time and I would sign them up. I would just see the men. Somebody would tell me that this is so and so, and he wants to join the C. I. O., and I said, "O. K.; here is your card. Fill it out and give me a dollar," and I would give it to him, give him his receipt and put the application card in my pocket and then I went on.

Q. Had you worked with any of these men on any specific job?

A. That were laid off?

Q. Yes; in this group.

A. I had helped some of them with their work; yes.

327 Q. Who?

A. I don't know what their names were. Frankly, I called them mate, and that was the end of it. Any ship yard man will tell you that we never talk in names. Down there it is mostly "mate."

Q. You do not know any nicknames that they may have gone by?

A. I call them mate, and that is all.

Q. "Mate" is the only way you ever knew any of them?

A. Any of those men. The men would tell me, "This is Mr. So-and-So, and he wants to join the C. I. O.," as I told you before, and I said, "O. K., if he wants to talk to me about it," and I talked to him about it and signed him up. I didn't miss a man yet.

Q. I am asking you as to these specific men, is "mate" the only way you knew them or the only name by which you called them?

A. I personally knew them all, yes.

Q. But that is the only way you knew them or called them?

A. Yes, that I personally knew them by. I have my job to think about and I don't have time to think about other people's names. If I did I could not do any work down there.

Q. How many were in this group?

A. Somewhere between 10 and 20, I think.

Q. That is the same group that as they walked up you stood back?

328 A. They were laid off; around 10 or 20 that morning; I think something like that, as I remember; I would not say definitely.

Q. As I understand it, it is generally 10 or 20. Where was Mr. Evans when this group walked up to where he was?

A. I walked up to where they were. Mr. Evans was standing with Mr. Sheldon by the check box.

Q. With the group?

A. Yes, sir.

Q. Standing with the group?

A. Yes, sir.

Q. I understood you to testify on direct examination that you stayed behind to see what was going on?

A. Stayed behind to see what was going on?

Q. Yes.

A. It was not behind. It was all right there. Nobody moved nowhere. And everything was right together. Everything happened right at the check box I testified about. Instead of going on the ship I stopped at the check box to see what was going on. There is where the group were.

Q. So the group stayed together all the time?

A. Absolutely. The man was at the check box and he stopped them instead of permitting them to drop the checks, and they turned them over to him.

Q. Were some of the members of that group permitted to go to work that morning?

A. I don't know whether they were or not.

Q. You were watching them. You say some of them dropped back to stand aside. Did not some of them go on in?

A. A bunch of them went to work. Some went to work. I don't know how many went to work.

Q. This group that we have been talking about, you say, consisted of ten to twenty men?

A. Approximately.

Q. Approximately?

A. Yes; approximately.

Q. Is that the group that was checking in?

A. They did not never check in. They come there to check in and the boss pulled them aside.

Q. That is the group that went there to check in?

A. Yes, sir.

By Mr. MARSHALL:

Q. Would you say that there were any men who were permitted to go in to work right before you, on that morning?

A. Many men?

Q. Yes.

A. Right smart; yes.

Q. The best part of them were allowed to go in?

A. I don't know. I did not count how many were allowed to go in but I am pretty sure that there were more that went to work than that did not.

Q. Right there where you were?

A. Yes; I am pretty positive of that.

By Trial Examiner PARADISE:

Q. How do you mean, go to work? Do they come in and get in line?

A. No, sir. They come there to the check box and they pick them checks off the rack and pass by there and drop them in the box. Those that were laid off that morning, they would tell him, "I want to see you; don't drop your check, and they pulled them out to the side, and right smart of them went on and dropped the checks and went on to work.

336 By Mr. MARSHALL:

Q. Mr. Bell, you have testified with reference to the telephone conversation, part of which you heard at the Ampthill plant.

A. Yes, sir.

Q. Where is that plant located?

A. It is located out of Richmond about ten or twelve miles, I imagine.

Q. During this conversation, what room were you in?

A. What room was I in?

Q. Yes.

A. Not being familiar with the offices up there I couldn't say, but it was—the employment manager was sitting at a desk and I was standing in the doorway of his office; mostly in his office.

Q. In the employment manager's office?

A. I imagine it was his office. He was sitting at a desk there.

337 Q. Was he the employment manager?

A. Yes, sir.

Q. What was his name?

A. I don't remember. But he told me he was the employment manager afterwards when I interviewed him with regard to employment for myself.

Q. Was he a tall man?

A. Really, he was sitting at the desk. I don't know whether he was a tall man or not.

Q. Did he wear glasses?

A. I don't recall.

Q. You don't know whether he did or not?

A. No, sir.

Q. On what day was this conversation held?

A. On Tuesday before the 4th of July; between 9 o'clock and 10 o'clock in the morning.

Q. Was anybody else in the room—in the office at the time?

A. No, sir; nobody was in his office at the time.

Q. Did you go to work there?

A. No, sir.

Mr. MARSHALL. That is all.

Trial Examiner PARADISE. Mr. Kearney.

By Mr. KEARNEY:

338 Q. What day was it, Mr. Bell, that you went up there to the Ampthill plant?

A. What day?

Q. That is right.

A. I went up there on Monday.

354 Redirect examination by Mr. BLUM:

Q. Just to clear up this question of the group that has been troubling you so much. On the morning you were discharged did you go to work in your normal course and in the same manner you would ordinarily go to work?

A. Yes, sir.

Q. When you got there, were men going in in a normal way as they ordinarily did?

A. Yes; they were.

Q. When you first got there and started to go in there, did you see any groups gathered together other than those going into the plant?

A. No, sir.

Q. There was no group at all?

A. No, sir.

Q. When did there become a group of ten or twenty men?

A. At the check box, and Mr. Shelton notified them not to drop the checks.

355 Q. Have you ever been asked for a contribution for the Employees' Representation Plan for printing or other expenses of the Plan?

A. No, sir.

356 Q. Do you know whether anybody else has ever been asked?

A. I never heard of it.

Q. How many times were these plans printed to your knowledge?

A. While I was in there, that constitution—I only saw one copy of it, but as every man came in there it was a standing rule they gave him a copy of that plan along with their other papers.

Q. When you were employed, a copy was given to you?

A. Yes, sir.

Q. By whom?

A. By the employment manager.

Q. Where did he take that from?

A. He took it from the employment office.

Q. Did you see him take it out from any desk or anything like that?

A. He had it on his desk, laid up there with a copy of the Employees' Representation Plan and the safety rules and regulations of the company, and the notice of insurance that you had to take out.

Q. That was the employment manager?

A. Yes; Mr. Nessler was the one who gave it to me.

Q. Was he the employment manager?

A. I think that is his job. He stays up there. I think he is the employment manager.

357 Q. Can you look at the four books I hand you and tell me which one was given to you or was similar to the one given to you?



A. This one right here is very similar [indicating].

Q. How can you identify this one as the—

A. Well, right in the first part of it it states how much the Employees' Representative shall get and how he is to be paid by the company for representing the employees. That is the main thing that I noticed.

Q. This representation of employees was revised in October 1931; is that right?

A. That is what I got in 1932, I am pretty sure.

Mr. BLUM. I offer this in evidence as a Board exhibit.

Trial Examiner PARADISE. Any objection?

Mr. KEARNEY. I object, because my understanding is that the complaint is in reference to the organization that is in existence now and in the form it is in now. I do not think what the situation was back in 1931 or 1932, before the National Labor Relations Act went into effect, is material.

Mr. BLUM. My purpose in introducing this is to show the Plan must have been printed on at least four different occasions, and that is why I am going to show four different sets of books. That is the only purpose.

Mr. KEARNEY. That it was printed?

358 Mr. BLUM. That it must have been printed on four different occasions.

Mr. KEARNEY. We do not deny it has been printed on five, I think, but I see what the plan—what it was back in 1930 or 1932, how that could possibly affect the situation now.

Mr. BLUM. The company's answer—

Trial Examiner PARADISE. Mr. Blum, if your only purpose is to prove it was printed, would it not be sufficient for that purpose if the record showed the concession by counsel for the Employees' Representation Plan that a booklet similar to the booklet attached to the motion to intervene, a part of Board's Exhibit 1, was printed in 1931, is given to this witness?

Mr. BLUM. No. There is another purpose also, Mr. Examiner, that I would like to add, and that is that the answer of the respondent refers to this Employees' Plan of Representation and states in the answer that they assisted employees in forming that plan in 1927, and that it was the same plan that is under discussion at the present time. That is the answer of the respondent in the case.

Mr. KEARNEY. Of course, that is one of the issues in this case. Whether it is or not; I do not think that this is the same plan that was put in force.

359 Trial Examiner PARADISE. I was interested in learning Mr. Blum's purpose. It would appear to me that the constitution of the employees' plan for 1927 right down to the present time, including all of the revisions would be pertinent to our inquiry. I will overrule the objection.

Mr. KEARNEY. Exception.

Mr. SKINNER. May I make a few remarks about that?

Trial Examiner PARADISE. I had understood after looking at the booklet counsel for the respondent had not interposed any objection. Was I mistaken in that?

Mr. SKINNER. We were waiting for an opportunity.

Trial Examiner PARADISE. I beg your pardon.

Mr. SKINNER. I may entirely misunderstand what your Honor has said but, as I understand it, you have said we have made some concession regarding the plan attached to the petition for intervention.

Trial Examiner PARADISE. No; you are mistaken.

Mr. SKINNER. As having been printed in 1931. Am I wrong about that?

Trial Examiner PARADISE. That is right.

Mr. SKINNER. Am I right about that?

Trial Examiner PARADISE. Yes; you are right.

Mr. SKINNER. As I understand it, we have never made any such concession.

Trial Examiner PARADISE. All right, then the concession is not made. The booklet is admitted and the testimony of the witness.

360 Mr. SKINNER. All right. Mr. Blum suggests or states that we have made a concession in our answer, with which we do not agree. We deny that we made any such concession. The charge in paragraph 7 of the complaint is that the respondent by its officers and agents did during the year 1927 cause to be put into force and effect at its Newport News plant a plan known as Employees' Representation. Said plan constitutes a labor organization within the meaning of Section 2, subdivision (5) of said Act.

That is the charge and here is our answer.

Trial Examiner PARADISE. I am reading it, sir.

Mr. SKINNER. The shipyard denies each and every allegation of paragraph 7 of said complaint, except that it admits it in cooperation with its employees in 1927 was aided in putting into force and effect at its shipyard a plan of employee representation, known as Representation of Employees. The shipyard alleges that said plan of representation of employees is an independent labor organization, to which its employees belong.

There is nothing in the answer which amounts to a concession that the Plan of 1931 has anything in the world to do with the charges now under investigation. The plan in force at the present time is the plan as of June 30, 1937.

Trial Examiner PARADISE. I do not think we need hear any further argument.

361 Mr. BLUM. Let me call one thing to your attention. If you will look at the plan filed by the intervener—that is, the petition for intervention—on the very front of the plan, in the lower right-hand corner, there appears these words: "Plan adopted June 30, 1927." Underneath that is "By-laws revised on five occasions." The plan is the same plan.

Mr. SKINNER. No, sir; that is not a fact.

Trial Examiner PARADISE. I do not think we need to labor the question. I think the Board is very much interested in the history of collective bargaining of this kind, and it is interested in the history of this Employees' Representation Plan or any employee representation plans that preceded this one and, on that theory, the evidence is admitted.

Mr. SKINNER. I agree with you that the Board is properly interested, if it has jurisdiction, in the plan of collective bargaining in existence since July 5, 1935; but we do not admit and we cannot admit that the Board is concerned with anything that took place prior to that time. If Mr. Blum wants to talk about the plan that has been in existence since July 5, 1935, I will offer no objection.

Trial Examiner PARADISE. I have made my ruling. Overruled.

Mr. SKINNER. Note an exception.

362 Trial Examiner PARADISE. Proceed.

Mr. SKINNER. I want to except also. I will state my exceptions because I think it is very material. I think the inquiry should be limited to the period between the time the Act went into effect and now, certainly.

Trial Examiner PARADISE. I might say for the benefit of counsel that the last case which I heard before I came here, which was out in Fort Wayne, Indiana, one of the contending unions in support of this contention introduced in evidence a contract which was made with the management in 1903. It was very material to the inquiry.

Mr. SKINNER. Of course, what might have taken place with one company has nothing to do with this case.

Trial Examiner PARADISE. I understand that. Please proceed.

Mr. SKINNER. Exception.

Mr. BLUM. Then I understand this has been admitted as a Board exhibit?

Trial Examiner PARADISE. Yes. It is admitted as Exhibit No. 11. (The document referred to was received in evidence and marked "Board's Exhibit No. 11.")

By Mr. BLUM:

Q. Were you working at the plant on May 11, 1937?

A. Yes, sir.

Q. Were you working there on May 17, 1937?

363 A. Yes, sir.

Q. I hand you this paper headed "Minutes of the General Joint Committee, Tuesday, May 11, 1937," and ask you if you ever saw that before?

A. Yes, sir; I saw this.

Q. Where did you see that paper before?

A. One like this on the bulletin board in the electric shop. I will not say it is the same one.

365 Mr. BLUM. I offer this in evidence.

Trial Examiner PARADISE. The objection of the intervenor is overruled.

Mr. KEARNEY. Exception.

Trial Examiner PARADISE. Let it be marked Board Exhibit No. 12.

(The document referred to was received in evidence and marked "Board's Exhibit No. 12.")

Mr. KEARNEY. May I ask the purpose for which that exhibit is introduced?

Mr. BLUM. Counsel for the intervenor has asked that I state the purpose for introducing this. Do I have to do so?

Trial Examiner PARADISE. You may state it if counsel desires.

Mr. BLUM. The purpose of the introduction is more than twofold. I can state the two purposes immediately. One is that these minutes were posted in the company's plant, on company property.

Mr. SKINNER. We would have admitted that if you had asked us.

366 Mr. BLUM. And secondly, those particular minutes show that the Employees' Representation Plan was in the process of being changed at that time.

Trial Examiner PARADISE. Proceed with your questioning, please.

Mr. KEARNEY. I would have admitted all of that, if that is the only purpose.

Trial Examiner PARADISE. Go ahead.

Mr. BLUM. I will ask you if you ever saw this particular minute dated May 17th.

The WITNESS. Yes, sir.

By Mr. BLUM:

Q. Where did you see it or a similar notice posted?

A. On the bulletin board in the electric shop.

Mr. KEARNEY. Do you want to introduce that for the same two purposes you stated?

Mr. BLUM. Yes.

Mr. KEARNEY. For those purposes I have no objection to the introduction of the exhibit.

Trial Examiner PARADISE. Show it to counsel for respondent.

(The document was handed to counsel for respondent.)

Mr. BLUM. Counsel for the intervenor asked me if I introduced it for the same two purposes. The first purpose is the same. 367 but the second purpose is to show that the plan actually was changed by these minutes. The bylaws and plans were changed.

Mr. SKINNER. We have no objection.

Trial Examiner PARADISE. There being no objection, let it be marked "Board's Exhibit No. 13."

(The document referred to was received in evidence and marked "Board's Exhibit No. 13.")

371 Q. Mr. Bell, have you talked with anybody in the intermission between one o'clock and two o'clock about this case?

A. Yes, sir.

Q. Who?

A. Mr. Wright.

372 Q. Who else?

A. I guess I talked to all of them.

Mr. BLUM: You talked to me, too, did you not?

Mr. MARSHALL. Wait a minute.

By Mr. KEARNEY:

Q. Who did you talk to? Mr. Wright. Who else?

A. Mr. Wright, Mr. Anderson, and those two fellows over there. I never did—I cannot think of their names, just the men who were directly concerned with this case.

Q. Who else?

A. That is all.

Q. Did you talk with Mr. Blum?

A. Absolutely not.

Q. He just said you did.

A. With Mr. Blum?

Trial Examiner PARADISE. Did you say you understood Mr. Blum to say that the witness spoke to him?

Mr. MARSHALL. I understood Mr. Blum to say that he talked to him.

Mr. BLUM. I asked the witness a question, you talked to me, too, did you not?

By Mr. MARSHALL:

Q. Did you?

A. If I did, I do not recall it. I may have. I spoke to him, but if I said anything to him about it, I do not recall what it was.

373 Q. I am not trying to confuse you. I want to get the facts here.

A. That is what I want to give you.

Q. You understand you are testifying under oath, do you not?

A. Yes, sir.

Q. It is now five minutes after three. That is correct, is it not?

A. Yes, sir.

Q. We had an intermission between one and two o'clock. That is correct, is it not?

A. Yes, sir.

Q. I asked you if during that time you talked with Mr. Jacob Blum. You testified under oath no.

A. Well, if I did I testified wrong, because I did speak to Mr. Blum—I remember it now. I answered too quick. I spoke to him out there on the platform as we came back up just before I came into the court room, but it was just a sentence and that is all there was to it and I did not remember it.

Mr. BLUM. I have no further questions.



565 Mr. BLUM. I call Mr. Blanton. Mr. Examiner, I brought this witness here under a subpoena and I expect him to be a hostile witness.

BLAIR BLANTON, a witness, called by and on behalf of the National Labor Relations Board, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. BLUM:

Q. Mr. Blanton, where do you live?

A. 1045 27th Street, this city.

Q. Newport News?

A. Yes, sir.

Q. Where are you employed?

A. I am employed at the Newport News Shipbuilding and Drydock Company.

Q. How long have you been there?

A. I have a continuous service record of 36 years, two months and 16 days.

566 Q. Continuous?

A. That is continuous. I have some other service that was not quite continuous.

Q. What is your position with the company?

A. General electrician.

Q. Do you have any supervisory capacity?

A. None whatever, sir.

Q. Were you with the company when the Employees' Representation Plan was started?

A. Yes, sir.

Q. In 1929?

A. Yes. I think it was 1927, if I may correct you.

Q. Will you tell us how the plan came into existence?

A. Well, no, I do not think I can tell you. Mr. Blum, at that time I was very much immersed in other work and I paid no particular attention to it. I was the treasurer of the Central Labor Union. I was a treasurer of a local union. I was secretary of a policy committee and secretary of a building committee that was buying a building, and I did not pay any attention to it, but I can give you my recollection of it.

Mr. BERKELEY. I wish to object to any evidence as to the Employees' union prior to July 5, 1935, when the Wagner Act came into existence or became effective.

Trial Examiner PARADISE. Over-ruled.

572 By Mr. BLUM:

Q. Just a minute. We are getting a little ahead of the story. The first change, according to the petition, was on July 1, 1929. That was the first time the bylaws were revised. Do you know what that revision was?

A. I beg your pardon?

Q. Do you know what that revision was?

A. 19—

Q. July 1929.

A. The bylaws were revised in 1929? I rather think whatever it was it was of minor importance. I do not think it was—

Q. Now, October 5, 1931, do you recall what that was?

A. Let us go back to 1929.

Q. All right.

573 Q. Let us see—1928, 1929. At the conclusion of the term which extends from, I think, then it was from July to May—no; it was June to June at that time instead of as at present from July to June. Anyhow, we found it from an employees' standpoint unworkable. Matters referred to the committee simply stayed in the committee or else they came out with a report that we could not handle them. There were such things as a deadlock committee. The colored committee, although their interest was the same as ours, did not come up. So the proposition was made that we would revise them and I was on the committee that year to whose lot that fell. We made a revision, mostly by deletion. For instance, that interplant conference, we cut that out. We cut out the provision for a colored committee. We cut out all standing committees, and made only one committee, to be an executive committee, mainly to handle things in the interior, between meetings.

Q. Did any of the officials of the company or the management assist you in revising it at that time?

A. I expect a good bit of that there—I held some—perhaps I held some private conferences with the personnel manager.

Q. Who was that?

A. Mr. E. J. Robeson.

Q. Mr. Robeson. Is that the 1929 revision that you are referring to now?

574 A. That is the 1929 revision.

Q. Then we get to the October 5, 1931, revision. What happened at that time?

A. 1931? I do not know that I can tell. To recall dates I work Sundays, Christmas, and on all days, and the only day I know is we have fish on Friday and chicken on Sunday. Those are the only days I have got clear, so when you ask me whether today is Wednesday or Thursday, I do not know.

By Trial Examiner PARADISE:

Q. Do you not remember whether you had chicken on one of the days when you were working on the 1931 amendment?

A. I did not work there Sunday, so I had no chicken. Probably that was a fish day. But the lad that got this cover up was anxious to make an exhibit, and I think that if there was any change whatever at that time—you speak of 1931. I believe if I recall correctly, about the only change was that somebody introduced an amendment that if a matter came before—was referred to a subcommittee,

that the representative who introduced that measure should be present. I rather think that was about all of the changes.

Q. Can you recall what the next amendment was? I am not going to pin you down to date, but around 1934.

A. Around 1934? Well, I can recall one that stands out.

Q. What is that?

A. Change in compensation.

575 Q. In compensation?

A. There was in between that period—it was in between that period that the compensation was changed.

Q. What compensation was that?

A. The compensation that the elected representatives received.

Q. From whom?

A. From the company.

Q. How was that changed?

A. How was it changed?

Q. Yes.

A. There was a reduction made.

Q. They continued to get compensation?

A. They got compensation, but it was reduced.

Q. Were there any changes between 1934 and 1936?

A. Yes; there was a change—I rather think it was at the end—the term ending in 1933 when the N. R. A. came in. At that time I rewrote the book and made some changes, or suggested some changes in procedure, and also suggested changes in the veto power which the president of the company had formerly possessed. I will say he had never exercised it, but it was in the book. In my opinion, the book after that date, or the plan up to that date, did not permit of grievances. That is my opinion.

Q. Yes; I understand.

576 A. My opinion was that it was not clear that a group could present grievances, and I rewrote the procedure to the extent of putting it so that it could be presented by a group. I also attempted to make all grievances, all negotiations, come through the representative, to break up a practice that I had observed of just anybody that had a grievance taking it up on their own hook and perhaps ~~when they messed~~ it all up bringing the case to me.

Q. What was the change in 1933?

A. That, I think, sir, was in 1933.

Q. Was that change made in the book?

A. Was the change made in the book?

Q. Yes.

A. The book was rewritten and that change was made after some contention. There were also some changes—there was a change as to separate meetings. Before that the book that we were revising—the previous book said there should be no separate meetings of either group. In this one we made provision for a separate meeting to be called by the chairman of the joint committee at the request of seven

members, presented in writing, with the notation of what they wanted the meeting called for.

Q. Was the president's veto power changed, and in what respect?

A. It was changed to the extent that any action taken by the general joint committee was final and binding, unless it disapproved by the president in 15 days.

Q. So he still had the power of veto. He had to do it within a certain time, is that right?

A. We kind of thought he was responsible for the management of the company and we ought to leave him a little something on the edge somewhere.

Q. That was not contained in the plan?

A. That was in the plan; yes, sir.

Q. Do you recall what the change was in 1934?

A. In 1934—

Q. I think you told that. It is the change in 1936 I am interested in.

A. 1936. I guess that was compensation.

Q. Compensation of whom?

A. Of the elected representative.

Q. What happened to the compensation?

A. Why, it went back to the original figure.

Q. What was that figure?

A. The original figure was \$100 a year.

Q. Does each elected representative of the company to the Employees' Representation Plan receive \$100 a year or did under this amendment?

A. You mean if he did receive it?

Q. Yes.

578 A. Yes.

Q. He got that from the company?

A. He got it from the pay window, I suppose it was.

Q. It was in the regular pay envelope?

A. No, sir. It was usually put in a separate envelope, so marked. In fact, it was always, invariably.

Q. Who changed the compensation?

A. In 1932, perhaps—I guess I am right—the assistant general manager came before the joint committee and told us they were extremely anxious to avoid cutting the hourly rate and in order to avoid that they were making a little saving here and a little saving there, and he asked us if we would be willing to accept a reduction from \$100 per year to \$60 per year and we accepted.

Q. When you got your \$60 or your \$100 a year you knew you were getting it from the manager, did you not?

A. There was no doubt about that. We got it from the management.

Q. What was the change in the plan in 1937?

A. In 1937 they changed the preamble. They changed the matter of having the management representatives at committee meetings. No one could attend the meetings other than the elected representatives, with the provision that the management representatives could attend only on invitation. That was perhaps the most outstanding feature. All reference to compensation was eliminated.

I believe that the president's veto—I will tell you—I submitted what I thought was a fair plan, about what either side was ready for. You understand, throughout these various changes, I kept in mind that I was dealing with a corporation that had never to my knowledge dealt with their employees through representatives that they recognized as representatives. They may have dealt with somebody in a flare-up, in a labor flare-up, but even then they were very reluctant to do it. But now they were willing to deal with employee representatives, representing groups, in some cases representing organization. And, on the other hand, the vast majority, especially the colored people, were entering an entirely new field. They were like a number of other employees there. They were Southerners first. They were colored people that had been oppressed—a new freedom, you know, might be dangerous to them.

In other words, neither side was ready for any large stuff and I tried in the various amendments and changes that I advocated to bring it up to the point that either side had, you might say, become educated to by experience. That was my idea.

Q. There were changes in 1937 which you referred to, took out all reference to the compensation to be received by the various representatives, is that right? That is one of the changes.

A. There was provision for compensation that went past Executive Committee, who has province to hold hearings and make changes in the laws, and it went by the General Joint Committee—that is, the reading did, but eventually the entire revised plan apparently or the entire plan or the entire document was referred to a separate meeting of the employee representative.

At that meeting we took it up section by section. There were consecutive articles. When we came to this article a number of the representatives objected to the wording. They said—I can not exactly quote it, of course, but the idea was that each representative would be appointed a safety inspector and for that he would receive the sum of \$100 per year payable quarterly. The representative who spoke on the question said that in the first place that was making them an officer of the company, which was not just according to all the ideas of what a representative should be. In the second place, it appeared to be a subterfuge in order to draw compensation. There was a motion made and seconded—I was in the chair at the time—that all reference to compensation be cut out. That motion was carried, as well as I remember, without any dissenting votes and with no discussion.



Q. Now, the reference to compensation was taken out of the book, is that correct, that you have described?

A. It was taken out of the copy that we had, out of the document that we were passing on and returned to the General Joint Committee.

Q. You continued to get compensation from the company?

A. No, sir.

Q. When was the last time that you personally received any compensation?

A. The last time I personally—I can not say, sir, but I received the compensation for the last quarter of the last term.

Q. The last quarter—

A. Let us see, that would be May, April, March—or something like that. I am not clear on that.

Q. Of this year?

A. Of this year, sir.

Q. Do you know whether any of the other employees' representatives received any compensation at the last quarter?

A. I do not happen to know but one.

Q. Who is that?

A. I do not know whether I can give you his name.

Q. Is he an employee representative?

A. He is not now. I do not know where he is, but he was sick. He had been sick three or four months. I rather think he is sick now. He is practically disabled. Some friend of his came to me and asked me if I could find out whether he had any bonus coming to him or not. He was not in my division, not in my district, or not in my department. In fact, he was a painter. I recall it now, he was a painter. Someone down there asked me to see to it and I went up—no, I got someone to call up. I think I got the personnel manager's secretary to call up the pay office and see if there was any bonus there. Then it occurred to me perhaps the last quarter's pay was there, and I called up to see if that was there. They did not seem to know. Then I asked them if they would make a search and call back to see who got it, and they called back and informed me some person—I think though it was the clerk in the paint department—had drawn that. But I did find a bonus for \$23 remaining there that for some reason had not been sent to him. I went back to the paint department and had the clerk make out the proper voucher and get it for him.

Q. For what quarter was that for which this other person had drawn this painter's pay?

A. That was the last quarter in the last term. We count terms from the 1st of July until the 30th of the following June—June in the following year. That would be June, May, April.

Q. For the quarter ending April?

A. No, ending June of this year.

Q. Of this year?

A. Yes, sir, this year.

Q. The third quarter—I mean the next quarter has not passed yet, since June?

A. The next quarter has not passed, but I can assure you there will be no compensation. I have been drawing money out from Uncle Dick Anderson for 36 years, and if you get a dollar out of him without proper credentials, you can beat me; and I am pretty good in picking up the dollars.

Trial Examiner PARADISE. We will recess for a few minutes. I might say this yellow paper handed up here during the course of the proceedings is a request for a recess at 3 o'clock.

(At this point a short recess was taken, at the conclusion of which the following occurred:)

By Mr. BLUM:

Q. Mr. Blanton, can you tell us why one of the representatives was paid for the quarter ending June 1937 and the others were not?

A. I did not tell you that the others were not.

Q. You said—

A. I told you it was a matter of knowledge. I knew this man received his pay because I checked in the office.

Q. I see. Do you know whether or not the others got it?

A. I do not think there is any doubt about their getting it.

Q. Did you get yours for the quarter ending June 7, 1937?

A. When I go back to the yard I will ask that. But I think I did.

Q. Was that the quarter ending at the beginning of June or at the end of June?

A. I will tell you, they did not get it for the month of June—I rather think it was earlier when they got it. Being Chairman, inasmuch as money is money, I was always very careful, with the co-operation and help of the checker, to see that each representative received what was due him. There was a \$5 fine for not attending meetings and as much as I could I tried to prevent imposition. For instance, this man who had been sick those months, it could have been he did not receive any compensation. But as a rule, I might say I think as a rule, where I would cut out a man for absence, the personnel manager would restore his pay to him. So I think

585 in all the years no one failed to receive the compensation that was due him. We even paid one man that served 80 days up on the city farm. He got his while he was there. I may say on account of Christmas being about our only holiday, I always arranged that they receive their pay before Christmas, although it was not due until after the January meeting when we had checked up on the absentees, but I would take the responsibility of having the pay roll turned in and always it was O. K. At this time, inasmuch as the committee was going out of office there would be a committee meeting in July—that would be another committee that had no jurisdiction over this past. At the end of a term, you see, all committees, all subcommittees, any business, and everything was wiped out, and we

started immediately fresh. The minutes of this last meeting in June would never be read. So the chances are that at the June meeting I directed that this pay be given and probably it came very early in June, maybe the first week, certainly not later than—I mean maybe the third week—well, I guess it would be—say the third week in June. I am willing to stake on that.

Q. That is for the quarter ending the third week in June?

A. That would be for the quarter ending June 30th.

Q. That was the day this particular painter, that you know of your own knowledge, did not receive pay, but somebody else got it in his place?

586 A. Oh, no. I beg your pardon. Some friend of his took it.

Q. Took it for him?

A. Yes; for him. He took it to his wife or took it to his home. I checked on it all the way through.

Q. I am trying to get at this: You are certain that was for the period ending in June 1937; is that right?

A. Yes; reasonably certain. Of course; I did not check to that extent.

Q. Now, this past quarter will be the first quarter for which no compensation will be paid; is that right?

A. That is correct.

Q. You said that is correct?

A. Yes. There will be no compensation for this quarter or, as far as I know, for any subsequent quarter.

Q. But this past quarter will be the first time?

A. This past quarter is the first time; yes, sir.

Q. Is there any membership in the employees' representation among the employees generally?

A. None whatever, sir.

Q. What is the purpose of the employees' representation plan?

A. The purpose of the employees' representation plan is to give the employees of that company a voice and a part, give them a part in the conditions under which they work.

587 Q. Is it set up for bargaining purposes with the employer?

A. It is set up for bargaining purposes?

Q. Yes.

A. There can be no bargaining outside of it; that is, if the management carries out the rules. I see that they are carried out in my district. Of course, there are 45 districts.

Q. And the management bargains collectively with the representatives of the employees' representation plan; is that correct?

A. Any change in wages, hours, and conditions generally must be taken up with the representatives, either individually or collectively. Of course, if it is something pertaining to the Electric Department, I would very jealously guard against any other representative having anything to do with it. I would certainly put up a bowl, even if they raised wages without saying something to me about it, because I would like to get a little credit for it, if nothing else.

Q. When was the last meeting of the executive committee of the plan at which representatives of the management were present?

A. I was not a member of the executive committee. They had a right to hold a meeting at any time, to take any action except that that action had to be approved at the following meeting of the  
588 General Joint Committee, I will say, because that is what they were working under then.

Q. My question, Mr. Blanton, was this: When was the meeting at which you were present—when was the last meeting, whether there was a meeting of the General Joint Committee or General Executive Committee, at which were present, representatives of the management were present?

A. I went to a good bit of pains to get that date, but the date is in my notebook some place. I would say that it was some time in May. I was not at the last meeting. I went to a meeting to present to them this amended plan, if you please, that I had drawn up. I left it with them after explaining my reasons for the changes which I had written in. That is all.

Q. When you say you went to them, to whom are you referring?

A. The executive committee, sir.

589 Q. Were any representatives of the management present at that meeting?

A. At least four of them.

Q. Who were they?

A. I don't recall. I don't recall now who were on it. They had some perpetual members, you might say, that had been on, all of them, through appointments, and I judge they were there—that would be Mr. Harvey and Mr. Shawen.

Q. What is Mr. Harvey?

A. He is an electrical engineer.

Q. And Mr. Shawen?

A. I think Mr. Shawen's official position is head of the time study department.

Q. They were present at that meeting?

A. Yes. I would say they were present, and certainly two others.

Q. Did they participate in your discussion with respect to the changes in the plan?

A. No, they did not.

Q. Did they make any suggestions or recommendations?

A. None whatever.

597 Q. These pamphlets of the Employees' Plan are in booklet form and they are printed. Is that right?

A. Yes. You have it in your hands.

Q. Who printed them? I do not mean the name of the printer. Who paid for them?

A. Who paid for the printing?

Q. Yes.

A. I don't know.

Q. Did the Employees' Representative Plan pay for it?

A. Maybe.

Q. Wouldn't you know that?

A. We had a bill for the printing. After the election we get a bill for printing and perhaps the booklet was included in it. I would not like to say because I did not scan the bill. I heard it read, but I don't remember the amount.

Q. Did you know at any time since you have been a member of the Employees' Representation Plan who printed the booklet? Who paid for them?

A. Who paid for the printing?

Q. Yes.

A. I think—I would say certainly that books printed previous to this would have been paid for with the general printing bill of the plant. You understand that a plant of that size has an immense printing bill. I understand they distributed it amongst the various printing firms here. I particularly told them when they were talking about the book of the shop right across the street, that it was the only one in town that had a card, although they happen to be C. I. O. now; still I favored giving them the printing.

By Trial Examiner PARADISE:

Q. Printing of what?

A. This book.

Q. When?

A. When this book was printed. I suppose the latter part of June.

By Mr. BLUM:

Q. To whom did you tell it?

A. I guess I told it to the cockeyed world. There were a number of people around.

Q. Did you tell it to any supervisory officials of the company?

A. Perhaps Mr. Robeson. We discussed the matter of printing. I met the printer there and did look over the galley proof.

Q. In Mr. Robeson's office?

A. In the ante-room; not in his private office. He was not present.

Q. He was present when you were talking about where the printing should go?

A. That was before we ordered it. I am talking about the galley proof. It had been to the shop and the galley proof had come back and I looked over it.

Q. Before it was ordered from anyone, you suggested to Mr. Robeson that this shop across the street would be a good place to have these books printed?

A. I told him that they were about the only card shop in town, and I favored getting the printing done by a union shop.



Q. Why did you say that to Mr. Robeson?

A. Because I had an opportunity—

Q. What was the purpose of saying it to him?

A. To call his attention to the fact that I favored work done by union firms. We have a lot of curbstome people in the printing business. I know of one fellow that has a printing press in his back yard and he does a lot of printing. I don't favor that. I don't like the individuals in that kind of business. I have had some trouble with them. I favor this firm. They do my printing for me. It is good work, and it is reasonable.

Q. Do you know who ordered the printing done?

A. Yes; it was ordered from the material department. All orders go from there.

Q. The material department of the company?

A. Yes.

Q. Who notifies the material department, or who, from the Employees' Representative Plan, notified the printing department or the material department that they wanted these plans printed?

A. They would not necessarily have to notify them. We could do it, but there would not be any need of our standing on a technicality. It would be perfectly all right. The way the discussion came up was the book was to be printed, and the book had to be distributed and I had a somewhat different idea as to how the distribution should be made from what they had.

Q. Who is "they"?

A. The management, if you please. To explain concisely, the management thought that if we just put them at the gate and handed them to the men coming in there that would be all right, but my idea was the first man going through that three one down would be a good place for about 200 men to throw them down. I thought they should be fed out through the department office and go down through the minor supervisors. It was very successful in getting a proper distribution.

Q. Is that the way it was done?

A. It was done exactly that way.

Q. These books of 1937 were distributed in that manner?

A. Yes, sir.

Q. By the supervisory officials of each department?

A. It was not by them in person.

Q. But through them?

A. They were responsible, as they are responsible for anything in the plant that comes in that department.

Q. How were the minutes of the Employees' Representation Plan gotten up after the meeting?

A. You will have to ask somebody else. I never got up any. That is the secretary's job. I always let a man do his own job. I know that they are gotten up; that they are typed in the shipyard. I do happen to know the girl that does it gets no extra pay, but I guess that is on account of the cinch she has as a secretary.

If I was secretary I think I would put up with a little something.

Q. Did I hear you correctly say that they were done in the office by a girl who did not get paid?

A. As far as I know, she gets no extra compensation.

602 Q. In whose office does she work?

A. I am not familiar with the main office. Perhaps it is the correspondence department. It might be Mr. Harvey's office. It may be made in anybody else's office. I heard people in the office talk about it.

Q. Was any kind of machine used to make duplicates?

A. We have any number of mimeographing machines in there, but there is no—this does not look like mimeograph work to me. Is this mimeograph?

Q. Have you seen anything like that before? What is the Board exhibit on it?

Trial Examiner PARADISE. Referring to Board's Nos. 13 and 12.

By MR. BLUM:

Q. Have you ever seen any papers similar to that?

A. We have here 603 sheets dated "minutes of called meeting of elected representatives, Monday, May 17, 1937."

These are evidently minutes of two meetings. One, I think, perhaps, was a regular meeting of the general joint committee, and the other one was a called meeting of elected representatives, I think. They follow the usual form of minutes that are given to each representative, mailed to him through our mail service. We use it for everything. I even order stuff from Sears Roebuck & Company

603 through it. It is nothing out of the ordinary for us to get private mail through it. If you write me a letter addressed to the Newport News Shipbuilding and Drydock Company it would come through the regular mail and be delivered at my bench. Each representative, each elected representative has, in the past, received a copy of the minutes of the last meeting. That is, as soon as possible after that meeting is held, there is one copy required to be made for filing. The secretary keeps that on file. There is a copy made to be sent to the personnel manager, or, as we call him there, he is not personnel manager; he is management representative when he deals with us.

Q. Mr. Robeson is the management representative when he deals with you?

A. Absolutely, representing the management.

Q. Is that true—is that provided for in the plan itself?

A. They can appoint anybody, but they have always appointed him. If we request it, they can appoint more; two, three, four, five, or whatever we request, each representative receiving a copy. It is his property. He can carry it home. He can post it on his locker, and if he wants to, he can put it on the board, although it is against the rules for anybody to do any posting on the board other than the watchman's department, but, personally, if there is anything in the

minutes that I received that I think that the men in the plant  
604 *that I received that I think the men in the plant*—in the shop,  
should know, I post it on the board.

Q. You say you post it on the bulletin board?

A. On the bulletin board.

Q. In defiance of the company's rules against it?

A. In all plants that I ever worked in there is always a hot controversy about what you can post on the board. I have always taken the privilege of posting—I have posted a special meeting of the local on the board and no one ever told me not to do it—none of the management. You will never get a privilege by standing by with your hat in your hand and waiting for it. What you want to do is you want to walk up and take what is in sight or you will never get anything.

Q. You posted those minutes on the bulletin board in the plant, and no one ever protested to you?

A. No, sir. No one ever said anything about it. I usually write on the bottom, "If taken off the board return to Blair Blanton." So far, I think I have every copy. None have been taken off except those I took off myself and probably put on a file copy.

614 By Mr. BLUM:

615 Q. When were you first elected to the Plan, yourself?

A. 1928.

Q. And when did you become chairman of that plan?

A. I became chairman of that plan in 1930.

Q. And have you been chairman ever since?

A. Yes; I have been chairman ever since.

632 Q. Who was in charge of the elections in 1936, that is, the judges and the various clerks?

A. My department—oh, you mean—are you asking me who were the judges and clerks?

Q. Yes; were they employees or representatives of the management?

A. They were employees; they would come below the grade of supervisors.

Q. Below the grade of supervisors?

A. Yes, sir.

Q. Were any quartermen involved in the elections, as officials of the elections?

A. Oh, no.

Q. In 1937, was the voting changed in any way?

A. It was changed to make the voting hours from 12 to 5.

Q. Twelve noon to 5 in the evening?

A. That's the day shift, and that would include the night shift, too, because the night shift would be in and checked up and go to work, you see.

Q. Where were these elections held, on what property?

A. Where were they held, on what property?

Q. Yes.

A. On the company's property.

633 Q. Was the election of 1937 held on the company's property?

A. All elections have been held inside the fence.

Q. Where are the meetings of the employees' representative plan held?

A. The meetings of the employees' representation plan have been usually—in fact, always have been in one of the buildings outside of the fence.

Q. Company buildings?

A. Well, that's the technicality. I don't know whether they are company buildings or not. At present we are holding them in the Apprentice Athletic Association. This building is built on company property which—but the—and built with company funds with a—that is, the building itself, the inside trim, and the flooring, and so forth, in fact all the work, electrical work and plumbing work, and so forth, was done by apprentices without any pay. It was perhaps a \$45,000 building that cost maybe considerably below that, because the inside work was done without any—

Q. Well, whatever cost there was, who paid it?

A. The company paid it; it was a contract let, I think, with the Virginia Engineering Company.

634 Q. In any event, that is where you are holding the meetings?

A. That's where we are holding the meetings.

Q. Even now, your last meeting?

A. Yes, sir.

635 But the building itself is used as an Apprentice Athletic Association Building, and the expense of the building is paid by the Association. They have three kinds of members. I happen to be a director of the building, and we have had quite a time meeting bills, and so forth and so on.

The company isn't so liberal as they might be. We don't get anything. You see, in fact, the president told us the first time we showed a deficit that he would close the building up.

So there you are, so that is what kind of a building it is. In other words, we look on it as our building.

Q. When you say the president said he would close the building up, you mean the president of the company?

A. I mean Mr. H. L. Ferguson.

Q. Ferguson? Now, coming back to the election of 1937, when was that held?

A. Well, that's another date. If you will look in the books there you will see that it is a certain Tuesday after a certain Monday, something like our National Election, whatever the date was, it was held on the date specified in the book.

Q. In June of this year?

A. In June of this year.

Q. Was that election held on company property, also?

A. All voting was done on the company property.

Q. Now, you say—

Trial Examiner PARADISE. Just a moment.

636 Article 4, Section 5 of the plan as revised June 30, 1937, provides that elections shall be held on the Tuesday following the second Monday in June, which would be the third Tuesday in June.

The WITNESS. Well, the date would be in there.

Trial Examiner PARADISE. That has been the date when you have held your elections for the last several years; is that it?

The WITNESS. It has been changed at least one time. We changed it to make the new term commence in July. I believe we cut a month off the old term, and that put the election further—

Trial Examiner PARADISE. Well, regardless of that, in 1936 it was held on the third Tuesday in June, is that right?

The WITNESS. It was held on the same date it was held this year.

Trial Examiner PARADISE. All right.

By Mr. BLUM:

Q. And the hours of voting were changed from 12 to 5, is that right?

A. This year; yes.

Q. Was the method of voting changed in any way?

A. No.

Q. Who were the clerks and judges in charge of that election?

A. Well—

637 Q. I do not mean their names, their capacities.

A. Well, we had one clerk, he was a low rate—he was lowest rating clerk in the department, we had one clerk and two workmen, two journeymen electricians.

Q. Who paid them for their services at the election?

A. As it happened this year, I think, all those men were salaried men, and there isn't any question about the pay of the salaried men. They get paid, that's all there is to it.

Q. Did you not say the salaried clerk in the office was the lowest rated?

A. Lowest rating.

Q. Would that be a salaried man, or who?

A. That would be a salaried man; I think all clerks are salaried.

Q. Was anything printed in connection with that election?

A. Oh, yes; the ballots.

Q. What else, any notices?

A. Notices of voting places.

Q. Do you know who ordered that printing?

A. The regular committee.

Q. Do you know who paid for those notices and ballots?

A. Yes; the employees' representative. I think I mentioned earlier in the evening that I recall that there was a bill presented for printing, and there was one of my items on it.



641. Q. Then did you call a special meeting on July 23rd, to consider that question of the employees' representative?

A. In the interim—this is—(witness refers to paper)—I called this meeting; yes.

Q. What did you say?

A. I called this meeting; yes, sir.

Q. And that paper that I just handed you, is a call of that meeting?

A. That is a copy of the call; yes, sir; the original, of course, I signed.

(The paper was thereupon marked for identification as "Board's Exhibit No. 17.")

(Mr. Blum hands Board's Exhibit No. 17 for identification to Mr. Kearney and to Mr. Skinner.)

Mr. BLUM. I offer this paper, which is dated July 23, 1937, entitled "Memorandum for Employees' Representatives."

By Mr. BLUM:

How was this notice, which is about to be marked—

Trial Examiner PARADISE. Just a moment.

642 Is there any objection to the receipt of the notice in evidence?

Mr. SKINNER. None.

Mr. KEARNEY. Not as far as I am concerned.

Trial Examiner PARADISE. All right; let it be marked as Board's Exhibit No. 17.

(The paper referred to, heretofore marked for identification as "Board's Exhibit No. 17," was received in evidence.)

By Mr. BLUM:

Q. How was this document, which is Board's Exhibit No. 17, distributed to these employees' representatives?

A. Through the yardman.

Q. What do you mean by the yardman?

A. Yard mail.

Q. Yard mail?

A. Yes.

Q. Oh, excuse me.

A. They have a mail service; it commences at 6 o'clock in the morning; I don't know how late at night, because I leave at 12 o'clock; it is going on all day.

654 Do you recall having a conversation with Mr. Robeson about his asking you to find out who in your department were members of the C. I. O.?

A. Mr. Robeson is sitting right over there [indicating].

Q. Yes.

A. Well, you don't see any scars on him, do you?

Q. No.

A. My God, if he ever asked me anything like that, he will probably get a scar on him all right, because if it doesn't show on the

outside, it will be on the inside, it will be on the inside, because I don't deal in names, I deal in petitions, not in names.

Q. I asked you, did he ever ask you?

A. No; he didn't. He might have wanted to, but he didn't do it.

Q. Did you ever have any conversation with Mr. Bell, or any other employees from the Electrical Department, in which you told him that Mr. Robeson had asked you to find out, and that you wanted some time to do it, because there were probably about forty in the department?

A. No, sir.

657 I don't recall any conversation with Mr. Robeson as to

C. I. O. membership, and I do not know—but one member that they have, one member, one man admitted to me that he was a member, and that he paid an initiation fee.

Q. Was that one of the discharged men you indicate?

A. That was one of the discharged men; yes.

Q. You say Mr. Harris?

A. Yes; that's Mr. Harris.

Q. You say Mr. Harris?

A. I don't know his initials, but Harris.

Q. Well, Mr. Harris is not involved in this case?

A. No, sir.

Mr. BLUM. I haven't anything further.

663 Cross examination by Mr. KEARNEY:

Q. Mr. Blanton, you are a member of the Union that has been affiliated with the American Federation of Labor for a number of years, are you not?

A. I would like to talk with the Examiner a few minutes before I answer that question.

Trial Examiner PARADISE. I suppose none of the parties have any objection?

The WITNESS. Do you want me to go out of the room, Mr. Examiner?

Mr. KEARNEY. No objection.

664 (The Trial Examiner and the witness left the room for a conference.)

Trial Examiner PARADISE. Let the reporter read the question, please.

(The reporter read the question as above recorded.)

The WITNESS. I belong to the International Brotherhood of Electrical Workers, and have been affiliated with them for many years.

By Mr. KEARNEY:

Q. How long have you been affiliated with them?

A. That is like service in the shipyards, but I have a card of continuously good standing, of perhaps 19 years. There were other memberships lapsed. I will explain that by saying that a young man will take the risk of going in and out of a union because his

age permits it, but when you get past 40, or begin to get past that age, you had better be careful to hold on to your ticket because you might not get back.

Q. You have been in the present local for 19 years continuously?

A. No; I have not been in the present local for 19 years. Formerly we had in Newport News what is known as the mixed local. In 1921 we obtained a charter for a marine local, which has the distinction of being the only marine local in the Brotherhood. That local is functioning today.

665 Q. Has it functioned continuously since 1921?

A. Yes; it has to do that to be continuous.

Q. Have you been a member in that since that time?

A. I just told you—no—I am not on the charter list. With my usual wrong-headedness I was not in favor of organizing a new local in a small city like this. I would rather have one strong local than two weak ones. I agree with the Industrialists to that extent; but that thing was carried over my head and later on account of being a marine worker I was arbitrarily transferred to this local.

Q. The fact that you belonged to the local union which was affiliated with the American Federation of Labor was generally known throughout the department in which you worked, was it?

A. Everybody in the shipyard knows it. Mr. Ferguson knows it. I really had three cards showing it to him.

Q. He knows it and everybody in the shipyard knows it. I am going to ask you this question, and if you have any objection, I am not going to insist on an answer. Do you mind telling me how many people in your shop belong to the union to which you belong?

Trial Examiner PARADISE. Mr. Kearney, that was one of the subjects which the witness discussed with me in the outside room, and he advised that he would rather not be asked to give any details which his union might consider it unwise to publish. Is that right (addressing the witness)?

666 The WITNESS. I will give him a reason, briefly.

By Mr. KEARNEY:

Q. If you have any objection to it I do not insist on the question and the only reason I asked you is because one witness had testified that there were three members in there and I wanted to find out whether that was correct.

A. That would be three members that will not be laid off, discharged, or furloughed. I will look them up. My reason is that the officials of the I. B. E. W. are not allowed to give out information about the organization.

Q. I understand you have been a member of the Employees' Representative Committee since 1928?

A. Inclusive; yes, sir.

Q. And you have been Chairman of the Employees' Representative Committee since 1929?

A. Since 1929. I took office on June 30.

Q. I understood you to testify yesterday that you had been active in the revisions that have been in the printed plan or agreement from the time you became a member of the Committee down to now?

A. I practically wrote them until this last revision.

Q. Did you make any of these suggestions contained in the revised plan?

A. The copy I submitted was rejected.

667 Q. Were any of the changes contained in this present revision suggestions made by you that were not contained in the 1934 copy?

A. I rewrote the preamble to get one word in so I might say, then, that I suggested a change in the preamble. Would you take it that way? Anyhow, the preamble is here, rewritten, but that one word is left out.

By Trial Examiner PARADISE:

Q. Do you mean the word you suggested is left out?

A. That was my purpose in re-writing it, to get one word in. I don't think that word is in yet.

By Mr. KEARNEY:

Q. What was the word that you wanted in there?

A. A-g-r-e-e-d—agreed.

672 Redirect examination by Mr. BLUM:

Q. Did I understand you to say that you write every revision of the printed pamphlet or plan of the Representative Employees except the last one?

A. I made the original copy. It may have been revised. You are familiar with the way those things go. When you throw them  
673 in the rack you get something back and it may not look like what you threw in there. I made the original proposition in each and every instance.

Q. Did you make the original proposition on June 30, 1937, in the last case?

A. I submitted a complete rewrite of the book that we had been working under, but it was not accepted.

Q. You say it was rejected?

A. It was accepted to the extent that the Committee—let's see if I can get that straight. At the first meeting of the Executive Committee I presented it. I had no—no one else had anything. I think I might as well tell it all, and why not?

Q. Go ahead.

A. If you get a piece of a story it is not right. If you note, under the old provision, as we have been over it again, the management had an equal number of representatives. I found that not to be a workable plan.

674 I found that not to be a workable plan. I found that the labor people in the ship yard paid too much attention to the voting strength of the respective sides and that on account of the

management having just as many as we had, they thought the management could block any proposition by voting strength. There was a provision against that, but that is not material. To get by that I submitted a provision that the management appoint just 15 representatives to the General Joint Committee; that a quorum consists of the majority of the elected, and the representatives, as it had previously; that no splitvotes, that is, no deadlock votes, be permitted. I found a way to get by that; so that is No. 1. In other words, 15 management men could not vote against 45. I will not go into that, though. That is not material. That is how it was.

In conference with Mr. Robeson—

Q. He is the personnel manager—

A. He is the personnel manager? He went over this, and he said that perhaps Mr. Woodward—

Q. Who is he?

A. I don't know who he is. He is the general manager at present. He is the manager of the plant—he was then.

Q. General manager of the Shipbuilding Company?

A. Yes. Anyhow, he is manager. That is his title. That perhaps he would want to look at it, and maybe he would have something to say; it would be well for him to talk to him,

675 Mr. Woodward's office is up in the main building, but he phoned to him—Mr. Robeson phoned to him, and he came down from his office to the personnel manager's office, which is supposed to sit in the geographical center of the ship yard, but whether that is true or not I don't know. He came down there and we sat down at the desk and went over it. He did not absolutely object to it, but wanted to cut out voting; not for the management representatives to have any vote; and not to be on subcommittees, and so forth. Anyhow, I don't recall just what the change was, but he took the fountain pen and wrote them in, and in the discussion we finally agreed—in fact, I tell you the gist of the thing was that Mr. Woodward was making a whole lot more concessions than I had asked for. As I said yesterday, maybe I thought at the time that he was going a little bit too fast, but I didn't tell him. Anyhow, we got by that. That amended copy I took with me to the following meeting of the executive committee, the copy which I corrected with the collaboration of Mr. Woodward and myself. And the motion prevailed that two copies be written up, one as mine, including management's representative, and one without any management representatives, and that they be submitted to a subsequent meeting of the committee and the committee decide. Then and there I thought I had done all that, ethically, as the chairman I could do, and I left the thing.

676 Getting back to the suggestions—

Q. Let me interrupt. As a result of that conference with Mr. Robeson and Mr. Woodward, and the drawing up of the two separate sets of plans; one incorporating your ideas, and one in-



corporating the collaborators' ideas, was the plan of June 30, 1937, finally evolved?

A. Well, I guess we could say that.

Q. Then it was written up in the form that we now have it, in the latest plan?

A. There were some changes. I think there were three or four changes, if you want them.

Q. Yes, please.

A. I am kind of glad to give them. Let's see. Of course, we just noted that there was a change in the preamble, but that does not matter. I will take it from memory without looking over the book. When I looked at the copy that came to the General Joint Committee I noted that, well, you see, our organization was not hard—any better isolated from the ship yard than that thing was. I can't think the management was—I did not know what they were doing. Anyhow, they made a provision for appointing a management representative. I suggested a change, that it be read, "A management representative or representatives."

When they got over to the special meeting, I noted the chairman had almost arbitrary powers as to calling special meetings, and I suggested they put in the old clauses we had in the old book, which I think—I am not clear—anyhow, I was left with that impression—two or three years with the impression that the chairman had to call a meeting, if he was requested to do so by seven members, but somebody had been in the place and suggested that simply by inserting the word "or" in there and the word—simply by putting in "or" upon written request of seven representatives, it would fulfill the purpose. I was pretty quick to see that the chairman was getting a good grip, so I let it go. That is about all.

Q. At the time of the meeting of the executive committee, in which the final plan was approved, were any of the management's representatives present?

A. When the final approval was made?

Q. Yes.

A. As chairman of the committee I endeavored—and when you stay in a labor organization twenty years you learn some technicalities. You learn to do things legally. If you don't you are going to get bumped by the people in Washington. I tried to do the thing legally. The existing committee was a general joint committee, and the decision was final and binding unless disapproved by the president of the company in fifteen days.

Consequently, it came to us at a meeting of a general joint committee, and was by the general joint committee referred to the elected representatives. It went before a separate meeting of the elected representatives, and I believe it was at that meeting that these changes I have just mentioned were made. They were not made at the first meeting of the general joint committee.

They were made in a separate meeting. This was then brought back there. I insisted on a reading of each and every article, the passage of the article, and a motion to adopt as a whole, and make it a part of the minutes of the meeting; and the management's representatives were at that meeting, because it was a general joint committee meeting.

Q. At the general joint committee meeting the management's representatives were present?

A. Yes, sir.

Q. And the changes were suggested and gone over?

A. No. I beg your pardon.

Mr. KEARNEY. He did not say that these changes were gone over. Trial Examiner PARADISE. He said the bylaws were read, article by article, and a vote was taken and they were adopted.

The WITNESS. Adopted with no change.

By Mr. BLUM:

Q. You said something about you had suggested the addition of one word in the preamble, the word "agreed," and that it does not appear in the printed form?

679 A. I did not read that.

Q. I am not asking you that. Will you show me at what point you wanted to put that word "agreed" in?

A. The preamble that I wrote was a great deal shorter than this. I wish I had it to refresh my memory, here. Anyhow, suppose we put it this way. If I had to stick it in right here now—"the principles of employee representation are hereby agreed to by the employees of the company and by the management."

Q. Who rejected the word "agreed"?

A. I could not tell you because I was not there at the final go-around. I made no attempt to put it in after that.

686 By Mr. BLUM:

Q. Since January 5, 1935, has the management, to your knowledge, in any manner, dealt with the representatives of the Electrical Workers' Union for the purpose of collective bargaining with the membership, or with any unit of it?

Mr. KEARNEY. I object to that, for this reason, that there has not been any evidence that there has been any request for them to deal with them. There has not been any evidence to indicate how many people belonged to that union. In fact, when I asked the question as to how many people in the shop belonged to the union it was objected to. For those reasons I think the question is absolutely immaterial.

Trial Examiner PARADISE. I do not think any of your reasons are valid. The objection is overruled.

Mr. KEARNEY. I think they are.

The WITNESS. No.

# MICRO CARD

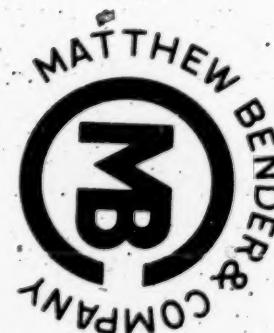
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By Mr. BLUM:

Q. They have not?

A. No, sir.

687 Mr. BLUM. I think that is all.

Trial Examiner PARADISE. You are excused.

(Witness excused.)

Mr. BLUM. If Your Honor please, that closes the Government's case. I now move that the pleadings be made to conform to the proof.

893 L. RHINESMITH, a witness called on behalf of the respondent herein, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. MARSHALL:

Q. What is your name?

A. L. Rhinesmith.

Q. Are you employed by the Newport News Shipbuilding and Drydock Company?

A. Yes, sir.

Q. In what capacity?

A. As quartermaster in the Electrical Department.

Q. Approximately how long have you been working there?

A. About seven years and six months.

905 Q. During the seven years that you have been employed in the shipyard are you aware of any activity on the part of the management there to discourage the employees from becoming affiliated with any union outside of the shipyard?

A. No, sir.

Mr. BLUM. That is objected to.

Mr. KEARNEY. That is one of the charges.

Mr. BLUM. That is one of the charges against the respondent, but not against the intervener.

906 By Mr. KEARNEY:

Q. Were you aware of any activity on the part of the management to interfere with the free selection of representatives in the employees' representative plan by the workmen in the yard of a grade lower than supervisor?

A. No, sir.

Mr. KEARNEY. That is all.

Trial Examiner PARADISE. Do you wish to cross-examine, Mr. Blum?

Mr. BLUM. No, sir.

907 FRANK SMOOT BEAZLIE, a witness called on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. MARSHALL:

- Q. Please state your name.  
 A. Frank Smoot Beazlie.  
 Q. Are you employed by the Newport News Shipbuilding & Drydock Company?  
 A. At this time; yes.  
 Q. In what capacity?  
 A. As one of the assistant foremen in the department.  
 Q. In what department?  
 A. The electrical department.

By Trial Examiner PARADISE:

- Q. Which department?  
 A. The electrical department.

By Mr. MARSHALL:

- Q. About how long have you been employed by the Newport News Shipbuilding & Drydock Company?

A. I was first employed by the company in 1903. I don't know just what date, but it was in 1903. Then I left in 1905, and went to Camden, and then I came back in 1912, and have been employed steadily since that time.

Mr. BLUM: That is all.

Mr. MARSHALL: That is all.

Mr. KEARNEY: I will make this witness my witness.

Direct examination by Mr. KEARNEY:

- Q. You say that you worked continuously in the yard last time or how many years?

A. Since 1912. I don't know just the date in 1912. I think April of 1912 was when I came back the last time.

- Q. When you came back the last time in what position did you go to work in the yard?

A. As a mechanic, and laying off work on the ship.

- Q. How long have you occupied the position you occupy as assistant foreman?

A. I could not tell you that exactly because I am very poor on dates, but I know that it has been quite a number of years.

- Q. Have you occupied that position, say, during the past ten years?

A. I suppose it has been ten years. It has probably been more than that.

- Q. Would you say that you have occupied it, to the best of your recollection, certainly since 1927?

A. I think so.

- Q. That was the year, and it is in evidence, that this employees' representative plan first went into effect in 1927?

A. I am not sure.



Q. Since the employees' representative plan has been in effect, down to this time, do you know of any effort or any activity on the part of the management of the shipyard, or anybody in supervisory authority, to discourage membership in any union of the employees' own choosing?

A. None whatever.

915 By Mr. KEARNEY:

Q. During the time the employees' representative plan has been in effect, were you aware of, or did you have any knowledge of any interference by the company with the employees in the nomination and the election of who should be their representatives on the employees' representative committee?

A. None whatever.

916 Q. You have no knowledge of any interference?

A. I have no knowledge of any interference since I have been there.

Q. Do you have any knowledge of any occasion when they were instrumental in the nomination or selection of any man for the committee?

A. None at all, as far as I know. The elections have been entirely up to the employees, to vote for, nominate, and elect whomsoever they pleased, without any interference at all.

Q. Do you have any knowledge of any instance when they interfered with or were instrumental in the defeat of any man for the committee?

A. None whatsoever; no, sir.

Mr. KEARNEY. All right.

Cross-examination by Mr. BLUM:

Q. Do you know how the employers' representatives were chosen?

A. I beg your pardon?

Q. Do you know how the employers' representatives were chosen?

917 Mr. KEARNEY. We will admit that up until June 30, 1937, that there were appointed an equal number of employ representatives by the management. Do you want to know they were chosen?

Mr. BLUM. Yes.

The WITNESS. I don't know. I could not answer, because I don't know.

By Mr. BLUM:

Q. Were you ever an employers' representative?

A. No; I never have been.

Mr. BLUM. That is all.

Mr. KEARNEY. That is all.

920 STANLEY S. EVANS, a witness called on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. MARSHALL:

Q. Please state your name.

A. S. S. Evans, or Stanley S. Evans.

Q. Are you employed by the Newport News Shipbuilding & Drydock Company?

A. I am.

Q. In what capacity are you employed by that company?

A. Assistant foreman in the electrical department.

Q. About how long have you been employed by the company?

A. About 29 years; that is, 1908 to the present time, excepting about 10 months, when I was out of the yard, during 1917.

937 Direct examination by Mr. KEARNEY:

Q. You have been employed there in a supervisory capacity for how long?

A. I think my first appointment to leading man must have been about 1919—I would say about 1919 or 1918.

Q. From 1919 to the present time you have occupied a supervisory position in the yard. Is that correct?

A. In one of our slack periods I was cut back with my tools.

938 Q. Since 1927, when the Employees' Representative Plan went into effect, down to date, you have occupied a supervisory position?

A. 1927?

Q. Yes.

A. I have.

Q. Since 1927 down to now are you aware of any activity or effort on the part of the management of the ship yard, or anybody in authority, to influence the employees, of a grade lower than leading man, in the selection of their representatives to the Employees' Representative Committee?

A. No, sir.

Mr. KEARNEY. That is all.

Mr. BLUM. No questions.

(Witness excused.)

939 C. M. RUDDER, Jr., a witness called by and on behalf of the respondent, and having been first duly sworn, testified as follows:

Direct examination by Mr. MARSHALL:

Q. Give your full name.

A. C. M. Rudder, Jr.

Q. Are you employed by the Newport News Shipbuilding and Drydock Company?

A. Yes, sir.

Q. In what capacity?

A. As foreman of the electrical department.

Q. Approximately how long have you been employed by this company?

940 A. Since July 7, 1922.

955 PAUL SCARBOROUGH, Jr., called as a witness for and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. MARSHALL:

Q. Will you please state your name.

A. Paul Scarborough, Jr.

Q. Mr. Scarborough, are you acting manager of the Newport News office of the Chesapeake & Potomac Telephone Company?

A. I am; yes, sir.

Q. Is Mr. S. S. Bortner away at this time on account of the death of his wife?

A. He is.

Q. And he is the manager?

956 A. Yes, sir.

Q. If any phone call were made from the Newport News Shipbuilding & Drydock Company located in Newport News to the du Pont plant located at Amthill, Virginia, just outside of Richmond, Virginia, would there be a record of that call in your Newport News office?

A. There would be; yes, sir.

Q. Have you examined the records in the Newport News office to ascertain whether or not any phone call was made from the Newport News Shipbuilding & Drydock Company, located in Newport News, to the du Pont plant located at Amthill, Virginia, on June 28th or June 29th, 1937?

A. I have.

Q. Do your records disclose any call made from the Newport News Shipbuilding & Drydock Company to the du Pont plant on either of those dates?

A. They do not.

Q. Have you also examined your records to ascertain whether or not any phone call was made from the Newport News Shipbuilding and Drydock Company at Newport News to the du Pont plant located at Amthill, Virginia, between the period of May 1, 1937, through July 3, 1937?

A. I have.

Q. Do your records disclose any calls having been made from the Newport News Shipbuilding and Drydock Company to the du Pont Company at Amthill, Virginia, during that period?

957 A. They do not.

Mr. MARSHALL. That is all.

Cross examination by Mr. BLUM:

Q. What are your duties regularly with the Telephone Company?

A. I am the manager of the Hampton Exchange.

Q. And where is the Hampton Exchange located, Mr. Scarborough?

A. The Hampton Exchange is located in Hampton, Virginia.

Q. And how far is that from here?

A. It is six miles.

Q. In your capacity as acting manager where do you keep your office?

A. My office is in Hampton, Virginia, and at Newport News at certain periods.

Q. When were you in Newport News this week besides today?

A. I wasn't in Newport News until today.

Q. When did you make this examination of your records?

A. I made the examination of our records this morning.

Q. At what time did you make that examination?

A. To be exact, at 11 o'clock.

Q. How long did you take for your examination?

A. Do you want the precise time?

Q. Well, approximately.

958 A. Well, it was between 11 and 12 o'clock.

Q. Where are those records of long distance calls kept?

A. They are filed in the form of tickets that are kept in a record by telephone numbers by dates.

Q. And where are they kept?

A. They are kept in files in the respective business offices.

Q. They are kept in Newport News, are they?

A. They are kept in Newport News for Newport News calls, but otherwise in the respective exchanges.

Q. Where did you make your inspection this morning?

A. I made the inspection this morning in the Newport News office.

Q. And where is that located?

A. It is located on 28th Street just off Washington.

Q. That is not very far from this court room, is it?

A. No, sir; it is not very far.

Q. When did you receive any notice at any to make that search of your records?

A. It was this morning that I received it.

Q. At what time did you receive it?

A. As well as I can recall, it was about 9:30.

Q. Who made that request of you?

A. Mr. John Marshall.

Q. Where was that request made on you?

959 A. I don't follow you, sir.

Q. Where were you when that request was made of you?

A. When the request was made of me I was in my office at Hampton.

Q. At Hampton, Virginia?

A. Yes, sir; that is right.

Q. Did you receive a telephone call?

A. Yes, sir; I did.

Q. Was it from Mr. Marshall?

A. Yes; that is correct.

Q. And you then left Hampton at what time?

A. I left Hampton just prior to 11 o'clock.

Q. How long did it take you to come over to Newport News from Hampton?

A. I should say not more than 15 minutes at best.

Q. Did you go right up to the office of the Telephone Company in Newport News?

A. Yes, sir. I went straight to the office there.

Q. And did you start immediately your search of the records in your examination?

A. Yes, sir; I did.

Q. How long did it take before the records came into your possession?

A. Immediately, sir. The records and files were immediately available to me.

960. Q. For how long a period of time are the records of long distance calls retained by the office?

A. At this particular time we have records retroactive to 1933.

Q. It was some time around 11 o'clock when you started examining those records, you say? Is that right?

A. Yes, sir; that is right.

Q. Did you find any records of the number of long distance calls from the ship yard at that time?

A. I am sorry, but I did not catch that.

Q. Did you find records of the number of long distance telephone calls from the shipyard at that time?

A. Yes, sir. There were a great many calls.

Q. And did you examine the records carefully?

A. Each individually.

Q. You found no record whatsoever of the calls to Amphill, Virginia, to the du Pont Company?

A. None whatsoever.

Q. How long did it take you to examine the records for the period of three months?

A. I should say not over 30 minutes.

Q. You did not bring those records here with you, did you?

A. No, sir; I did not bring those records here with me.

Q. You were not requested to bring them with you, were you?

A. No, sir; I was not.

961. Q. You were just asked to search for them, were you?

A. Yes, sir. I beg your pardon. What was your question?

Q. You were just asked to search for them, were you?

A. I was asked to ascertain if those calls were recorded.

Q. Did you find any record of any calls to Amphill from the Newport News Shipbuilding and Drydock Company?



A. No, sir; I did not.

Q. In that three months' period?

A. In that three months' period.

Q. What was the date of the last record which you examined, Mr. Scarborough?

A. The date of the last record was the 21st of August.

Q. And you started at May 1st?

A. Yes, sir; that is correct.

Mr. BLUM. That is all.

Redirect examination by Mr. MARSHALL:

Q. Mr. Scarborough, I would like to ask you one question. Are you interested in any way in the outcome of this case?

A. No, sir, I am not; none whatsoever.

Mr. MARSHALL. That is all.

By Mr. BLUM:

Q. Is the Newport News Shipbuilding and Drydock Company a large subscriber to the Telephone Company?

A. It is.

Mr. BLUM. That is all.

962 Mr. MARSHALL. That is all.

By Trial Examiner PARADISE:

Q. How many slips did you examine altogether, Mr. Scarborough?

A. I did not count them, sir. I have no idea.

Q. Can you give me an approximation?

A. No, sir; I cannot.

Q. Were a thousand?

A. I wouldn't say so.

Q. And you say it covered the period from May 21st?

Mr. MARSHALL. No, sir; he did not say that. It was May 1st.

By Trial Examiner PARADISE:

Q. From May 1st?

A. Yes, sir; from May 1st.

Q. To when?

A. Until the 21st of August.

Q. To the 21st of August?

A. Yes, sir. I should say that the bill from billing date to billing date; and I examined the tickets as they were billed on succeeding months. Our billing date does not conform to a calendar month.

Q. Just one more question. Is there a possibility that those records are not complete?

A. No, sir; I don't think there is.

Q. Well, could it be that some of the slips for calls that were made are not in the files now?

963 A. I do not think so.

Q. You don't know that, do you?

A. We can't definitely know a great many things; but I know those records, for the purpose of the F. C. C. data are always kept intact. We take particular pains to see that none of them are lost. Over a period now of over four years we have all of them.

Trial Examiner PARADISE. That is all.

(Witness excused.)

Mr. MARSHALL. Now, may it please the Examiner, I would like to make a motion.

You will probably recollect that Mr. Bell testified as to a telephone conversation alleged to have taken place in the office of the du Pont Company at Amphyll on June 29th. That is shown definitely in the record. You will recall that at the time the testimony as to this conversation was completed I made a motion to strike it out upon the ground that it was not sufficient to stand here as any type of evidence whatsoever. And you will recall that after hearing argument from counsel for the respondent and counsel for the Board you were somewhat dubious as to the weight of that evidence, but you did state that from the context you thought it should go in to show that a call was made from Newport News.

964 You will recall that Mr. Bell testified that he could only hear a portion of the evidence or of the conversation, and that was when he was standing in back of the man who was listening through the telephone.

You will recall that Mr. Bell testified that the word "agitators" was written down with reference to Mr. Anderson and Mr. Wright. You will recall from the record that Mr. Anderson and Mr. Wright both testified that subsequent to that time they worked for this particular plant at du Pont, which, of course, they probably would not have done if they had been shown as agitators.

You will recall Mr. Bell testified under oath that the man came into the office and said that the Newport News Steamship and Shipbuilding Company was calling. And the record so shows.

Now, in view of the fact of the flimsy basis of that kind of evidence and in view of the fact that an impartial witness, the manager of the local telephone company, has testified to you that his records, which are very accurate and are shown to be such after a careful examination on the part of the attorney for the Board and on the part of the Trial Examiner, that from his examination of his records that no such call was made on that particular date of June 29, 1937, or on any date between May 1st and some time subsequent to June 29, 1937. This man testified that he is entirely unprejudiced and impartial in this matter.

965 we move at this time that all of the evidence pertaining to the testimony of Mr. Bell be stricken from the record.

Mr. BIRM. Mr. Trial Examiner, there is only a very brief argument in reply to Mr. Marshall's statement, and that is this: That the quality of the testimony that no such call was made is probably of the same quality as the testimony that Mr. Bell gave that he did make it. The best evidence would be the records themselves.

The records themselves were not produced. We are here asked to take the word of this man that he examined the records but finds no such records. We don't know whether he slipped a page or skipped a page or anything else.

The quality of his testimony is exactly the same as the quality of Mr. Bell's testimony and, therefore, both are in the record to be taken for what they are worth.

MR. MARSHALL. In reply to that, I will be glad to say—and I know Mr. Scarborough will be glad, if Mr. Blum and the Trial Examiner will personally go there and look at those records, his statement will be substantiated.

TRIAL EXAMINER PARADISE. I am not inclined to agree with Mr. Blum that the records themselves would be the best evidence. The call might have been made, although it might not have been made from the office of the Newport News Shipbuilding Company.

966 MR. MARSHALL. About these names, you say, or from some other place?

TRIAL EXAMINER PARADISE. Yes.

MR. MARSHALL. Do you mean come from some private place?

TRIAL EXAMINER PARADISE. I do not know where it was made from, but it might have been from some place other than the office of the Newport News Shipbuilding and Drydock Company.

MR. MARSHALL. Mr. Bell testified that it was coming from the company.

TRIAL EXAMINER PARADISE. He testified the party on the other side said, "This is the Newport News Shipbuilding Company."

MR. BERKELEY. The Newport News Steamship and Shipbuilding Company.

TRIAL EXAMINER PARADISE. By the way, is there a Newport News Steamship Company?

MR. BERKELEY. No, sir.

TRIAL EXAMINER PARADISE. I will deny your motion.

MR. MARSHALL. An exception, if Your Honor please.

973

C. M. RUTTER, JR.

Cross-examination by Mr. BLUM:

Q. Mr. Rutter, it took us a long time to work up to you. But how long have you been foreman of your department?

A. Since April 11, 1933.

Q. How was it that you got the job as foreman?

A. I beg your pardon, sir?

Q. How was it that you got the job as foreman?

A. How was it?

Q. Yes.

A. You will have to ask my superiors as to that. They made the appointment.

Q. Were you a graduate of the apprentice school?

A. Yes.

Q. And you went to work in the yard?

A. The apprentice school is part of the yard program.

Q. After you graduated what job were you on?

A. I was in the superintendent's office as a staff man.

Q. As part of the superintendent's staff?

A. More or less; yes, sir.

974 Q. And then subsequently were you promoted up the scale until you became a foreman?

A. That is right.

Q. How long after you graduated from the apprentice school were you made a foreman?

A. I finished my apprenticeship in 1926.

Q. When did you become a foreman?

A. April 11, 1933.

994 By Mr. KEARNEY:

Q. Mr. Ratter, are you aware of any activity or effort on the part of the officials or anybody in authority in the shipyard in regard to the selection and election of representatives for the men in the different departments on the Employees' Representative Committee?

A. No, sir; I am not.

995 Q. Do you know of any instances in which any of the people in supervisory positions or with supervisory authority have interfered with them or intimidated them in any way?

A. No; I can't say that I have.

Mr. KEARNEY. That is all.

Mr. SKINNER. That is all.

(Witness excused.)

1013 HECTOR ROSCOE WESTON, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MARSHALL:

Q. What is your full name?

A. Hector Roscoe Weston.

Q. Mr. Weston, prior to May 31, 1937, were you employed in the electrical department of the Newport News Shipbuilding and Dry Dock Company?

A. Yes, sir.

Q. Were you laid off on May 31, 1937?

A. Yes, sir.

Q. Were you laid off at the same time Mr. William Bell was laid off?

A. Yes, sir.

Q. At the time you were laid off did you belong to the

C. I. O.?

1014 A. No, sir; I did not.

Q. After you were laid off did you have occasion to be walking out of the company's property with another man who was laid off at the same time you were laid off?

A. I did.

Q. And who was that?

A. His last name was Holder.

Q. Holder?

A. Yes, sir.

Q. Did he make any comments to you as to whether or not he belonged to the C. I. O.?

A. The only comment he made to me was that he did not.

Q. Do you know where Mr. Holder is now?

A. I don't know where he is now. He told me his home is in Asheville, North Carolina.

Q. Do you know where his home is?

A. He told me his home is in Asheville, North Carolina.

Mr. MARSHALL. Answer Mr. Blum's questions.

Mr. BLUM: No questions.

Trial Examiner PARADISE. You may stand aside.

COLEMAN BENNETT BOYETT, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MARSHALL:

Q. Will you please state your full name?

1015 A. Coleman Bennett Boyett.

Q. Mr. Boyett, on and prior, and sometime prior to May 31, 1937, were you employed in the Electrical Department of the Newport News Shipbuilding & Dry Dock Company?

A. I was.

Q. Were you laid off on May 31, 1937?

A. I was.

Q. Were you laid off at the same time Mr. William Bell was laid off?

A. I was.

Q. At the time you were laid off, did you belong to the C. I. O.?

A. No, sir; I did not.

Mr. MARSHALL. That is all.

You may answer Mr. Blum.

Cross-examination by Mr. BLUM:

Q. You know Mr. Bell, sitting over here on my right, don't you?

A. I do.

Q. Did he ever ask you to join the C. I. O.?

A. I don't remember exactly.

Q. Did you ever sign an application with him?

A. I did not.

Q. You are sure of that, are you?

A. I am.



1016 By Trial Examiner PARADISE:

Q. What is your answer to the last question?

A. I did not.

By Mr. BLUM:

Q. Did Mr. Bell ever talk to you about the C. I. O.?

A. Not that I remember.

Q. You say he did not?

A. He might have. I don't remember. Some of them did and some of them did not.

Q. Are you working back in the shipyard now?

A. I am not. I am not working now. I am not employed anywhere.

Mr. BLUM. Will you give us a minute, Mr. Examiner?

Trial Examiner PARADISE. Yes, Mr. Blum.

By Mr. BLUM:

Q. You are absolutely certain you never signed any application given to you by Mr. Bell for membership in the C. I. O.?

A. No, sir; I have not.

Trial Examiner PARADISE. What was the answer?

Mr. BLUM. He said he had not.

Mr. MARSHALL. He has not, Mr. Examiner.

Mr. BLUM. That is all.

(Witness excused.)

Mr. MARSHALL. With your permission, Mr. Examiner, and with the agreement with Mr. Blum, I should like to ask Mr. 1017 Weston, the witness who preceded Boyett, whether or not he is now working in the shipyard.

Trial Examiner PARADISE. Mr. Weston, will you please come back here for just a moment?

Mr. MARSHALL. Mr. Weston, I just wanted to ask you are you now working in the shipyard?

Mr. WESTON. No, sir; I am not.

EDWIN HUDSON SMITH, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MARSHALL:

Q. Will you please state your full name?

A. Edwin Hudson Smith.

Q. Mr. Smith, on May 31, 1937, and some time prior thereto, were you employed by the Newport News Shipbuilding & Dry Dock Company in the Electrical Department?

A. Yes, sir; I was.

Q. Were you laid off on May 31, 1937?

A. Yes, sir; I was.

Q. Were you laid off at the same time Mr. William Bell was laid off?

A. No, sir; I was not.

Q. Do you know Mr. Bell, sitting right here (indicating)?

1018 A. I don't know him personally; no, sir.

Q. Do you recognize him as being Mr. Bell?

A. I have seen him aboard the ship; that is all.

Q. Do you or do you not recognize him as being one of the men who were laid off at the same time you were laid off?

A. I do; yes, sir.

Q. At the time you were laid off, did you belong to the C. I. O.?

A. No, sir; I did not.

Q. Are you now working in the shipyard?

A. No, sir; I am not.

Mr. MARSHALL. That is all.

Mr. BLUM. No questions.

1035 EDWARD J. ROBESON, JR., a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. SKINNER:

Q. Mr. Robeson, you have given your name to the reporter?

A. Yes, sir. It is Edward J. Robeson, Jr.

Q. Do you live in Warwick County?

A. Yes, sir. I live outside the city limits.

Q. Are you employed by the Newport News Shipbuilding & Dry Dock Company?

A. Yes, sir.

Q. How long have you been employed by the company?

A. I have been employed by the company for 22 years.

Q. What is your present position with the company?

A. Personnel manager.

Q. How long have you been personnel manager?

A. The title of personnel manager was given me in June of 1936.

Q. What position did you occupy before June 1936?

A. 1929 the title was made personnel superintendent.

Q. And you were personnel superintendent from 1929?

1036 A. Yes, sir.

Q. Up until June 1936?

A. Yes, sir.

Q. And what employment did you have before you became personnel superintendent in 1929?

A. In January 1918, I was appointed employment manager. Previous to that I was in the ship fitters department. Previous to that I was a civil engineer.

1037 Q. Mr. Robeson, Mr. Bell, the witness in this case, has testified that Mr. Blair Blanton told him that you had asked Mr. Blanton to get the names of the men in the electrical department who had joined the C. I. O. and who belonged to the C. I. O. I asked you if you ever made any such request of Mr. Blanton?

A. No, sir; certainly not.

Q. Did you ever make any such request of any one?

A. No, sir.

1053 Q. Have you ever been instructed by company officials as to any attitude you should take with reference to an employee's union affiliations, in the course of employing, laying off, or discharging the employee?

A. Yes, sir.

By Trial Examiner PARADISE:

Q. What is the answer?

1054 A. Yes, sir.

By Mr. SKINNER:

Q. What instructions did you receive from the company?

A. Beginning with my appointment as employment manager, I was talked to by Mr. Cornbrooks, superintendent at that time; Mr. Ferguson, who was president and general manager at that time; and Mr. Sidney Wood, who was, I think, assistant to the president, and later vice president; about the company's policies, and it was explained to me what they meant by "open shop," and by being certain that the employment department and myself maintained an open-shop policy, and had no regard for affiliation of persons with labor organizations, and even though we knew about a man showing his card or something, there was to be no record or no consideration given such in connection with his employment with this company.

By Trial Examiner PARADISE:

Q. That was back—

A. That was in '18. At other occasions, when those things had been current in the country, generally, they had been generally discussed with me and other department heads. The most recent I recall, and I mean I will be glad to tell it—it is, all right—Mr. Woodward was General Manager, and he talked with me, and he had a superintendents' meeting about this time—I don't remember the date—some time ago—I believe last fall—in which he had all the department heads and the superintendents, and there was so  
1055 much of this going on other places, until he stated very positively, and reiterated the company's policies, and asked the superintendents and department heads to confer with their foremen, and to remind them all that while they could caution anyone who was active in soliciting members at work that he could not do that, that they were to take no part, one way or the other, in whether or not a man joined their or any union, and that that should have no effect on their consideration of anything in connection with employment relationships. I was present at that time. That is the most recent general discussion I have been in on.

By Mr. SKINNER:

Q. Have you undertaken to carry out the company's policy, as you have explained it?

A. Yes, sir. I have been very careful to. I think it is right.

Q. When a man applies for employment at the shipyard is he asked whether or not he belongs to a union?

A. No, sir.

Q. Is he questioned in any manner as to his views toward or activities in any union?

A. No, sir.

1064 By Mr. BLUM:

Q. Do I understand you said you had no conversation with Mr. Blanton relative to discussing who were members of the C. I. O.?

A. No, sir. It would not have occurred to me to have had one.

Q. No such conversation ever took place?

A. No, sir.

Q. With Mr. Blanton or with anybody else?

A. I am sure it did not.

1067 Q. With reference to Mr. Bell and the telephone call that has been referred to in evidence, Mr. Ferguson is president of the Shipbuilding Company, isn't he?

A. Yes, sir.

Q. Is Mr. Ferguson a director in the telephone company?

A. I don't know, sir. I couldn't answer.

Q. Do you know whether or not Mr. Ferguson has a private exchange in his own home?

A. I am pretty sure not. I think he just has the same kind of number that anybody else has. I mean I wouldn't see any reason why he would.

Q. Your inquiries as to the telephone call were confined to the Personnel Department, were they not?

1068 A. Yes, sir. It amazed me so much I put on the heat to find out about it. I heard it. I talked to anybody who had any reason at all for inquiring. As a matter of fact, I don't think, and I didn't think it possible, because only myself and Mr. Adams, in charge of the office, would hardly put through a call. I mean, putting in a long distance call from the ship yard is not just done casually. In fact, only certain persons can put through a call.

Q. There are other phones than those in your department?

A. Yes; that can put them through. But that department head is supposed to arrange the call.

Q. You did not discuss with other department heads as to whether or not they had called?

A. No; I didn't make any further inquiry about that.

Q. Was there a relationship existing between you, as personnel manager, and the personnel manager of the du Pont Company whereby you would send them certain men?

A. That was an arrangement that grew not from any personal contact, because actually I didn't know him. But the gentlemen were out of jobs, and we heard they had a big construction job at Amphyll and we became very slack in the woodwork with

people and we worked a lot of them in fitting and around other places, and we sent a few of them to du Pont at Amptill. I am not so sure but that I did get a tip-off from the United States Employment office that men were going. We first started sending some of these men and they would come back and tell us they could use 40 or 50 more, and we would round up some more and let them go. But we had no guarantee they would get a job. It was just the same as sending them to Bethlehem.

As a matter of fact, I did not send these men up there that you refer to. I know nothing about just how they got the employment.

Q. Who did send them?

A. I found out afterwards from investigation; we had had telegrams from them as to others, to verify the men who had worked for us, and we sent the usual that we send, this statement of record and occupation, and so on.

Q. They were telegrams, were they?

A. Telegrams is the only records I was able to locate. I really made a personal inquiry to find out what was going on.

Q. Were all of those telegrams received by your office or were some of them called off on the phone by the telegraph company?

A. You mean the ones we received?

Q. Yes.

A. They don't come to me. They come to the employment department. If they came to my office the secretary would send them to the employment department because the records are at the employment department.

Q. You made some statement about you did not actually send the men up themselves.

A. Yes.

Q. Who did send them?

A. Mr. Adams is responsible for the telegrams sent from the employment department. He is personally responsible for them.

Q. Did you ask Mr. Adams as to whether or not he had had any conversation with the personnel manager there?

A. Yes. I was right busy trying to find out if we had called the du Pont people and who we called and why we called. I was informed that there had been no calling done from the employment office. Then I checked and checked further. That is what injected all of the program into it, because I wanted to know.

Q. And you found no record of any calling of any kind to the du Pont department?

A. Yes; that is right—so far as any call, not only in the employment office, but at the ship yard, according to the record, and later records they had, that anybody had called. Of course, it was possible, but it was doggone improbable. I couldn't imagine it. I checked to find out.

Q. What did you say was possible?



A. It was possible for the employment people or somebody to have called; and I wouldn't deny it without checking; and it was possible.—

1083. Q. The policy that was given to you in 1918 was that the open shop principle would prevail?

A. Yes; the open shop principle was explained to me.

1085. By Mr. BLUM:

Q. You say, as I understand you, in the fall of last year, 1936, those same principles were repeated to you by Mr. Woodward, and the other superintendents who were gathered together in the meeting? Is that right?

A. I did not check on the date. I said I thought it was in the fall. But it was within a year, I think.

Q. In 1936?

A. I should say Mr. Woodward was made general manager. I said the 30th of June 1936. That was nothing particularly unusual. I mean to call attention to company policies, or certainly any of them to be continued, and the importance of them in the times in which we are.

Q. And he explained that to you and all of the other superintendents in the plant?

A. Yes; I think they were all there—the regular group that is called in for those consultations.

Mr. BLUM. That is all.

Redirect examination by Mr. SKINNER:

Q. Mr. Robeson, you knew that this conference or conversation that Mr. Woodward had with the superintendents and you took place when he was made general manager?

A. But not right at that time. But I said it was within the year, because when Mr. Woodward was general manager, I think in June—and I am pretty sure about that. Now, I didn't check that.

Q. He was general manager when the conference was held? He was general manager when he held the conference, or when the conference was held?

A. Yes; he was general manager when the conference was held.

Mr. SKINNER. That is all.

1088. By Mr. KEARNEY:

Q. I have some questions I would like to ask the witness that do not properly come under cross-examination.

Trial Examiner PARADISE. In other words, you are now making him your witness for your part of the case?

Mr. KEARNEY. That is right.

Trial Examiner PARADISE. You may go ahead.

By Mr. KEARNEY:

Q. Mr. Robeson, during the 22 years that you have been connected with the shipyard, has there been any labor dispute that has interrupted the normal relations or business of the yard?

A. No, sir.

Q. Has there been any strike that you have knowledge of during the past 22 years that has interfered with the normal operations of the yard there?

A. No, sir.

Q. Is there any strike in progress now so far as the yard is concerned?

A. Not that I am aware of.

Q. You are familiar with the Employees' Representative Plan that the employees have there in the yard?

A. More or less; yes, sir.

Q. And I believe at this time you are the management representative, or you have been designated as the management representative?

A. Yes, sir; that is correct.

Q. During the time that this plan has been in operation—and the evidence here is that it has been in operation since 1927—are you aware of any activity or effort on the part of the management of the shipyard, or any of the officials, with regard to who might be selected or who should not be selected to represent the employees?

A. No, sir. The effort has been otherwise, if I might say so—to safeguard it.

Q. By that do you mean the effort has been to leave the selection of the representatives of the employees entirely up to the man?

A. Yes, sir.

Q. Without any interference?

A. Yes.

Q. Or domination on the part of the company or any of its officials?

A. Yes, sir.

Q. Are you aware of any instance, Mr. Robeson, in which a man that has been selected as the representative has been discriminated against because of his activities or efforts as the Employees' Representative?

A. No, sir; I am not. If I had I would have looked into it.

Q. I understood you to testify that there are a great number of men employed in the yard that are affiliated with the unions.

A. That is my understanding. I would be hard put to it to prove much about it.

1091 Q. You heard Mr. Blanton say that he had been affiliated with a union?

A. Yes. And I occasionally saw names in the papers advertising meetings, and I occasionally saw committees that are arranged.

Q. It has been the policy of the yard not to try to find out who belongs to the union or in any way to discriminate against anybody because of his membership in the union?

A. Yes.

Q. Or because of his affiliation with any union? Is that right?

A. Yes, sir. That is common knowledge.

Mr. KEARNEY. That is all.

By Mr. BLUM:

Q. Mr. Robeson, do you know how the Chairman of the Employees' Representative Committee was chosen in the last election in June 1937?

A. No, sir. I have not been at those meetings. All I know is that I am naturally sent the copies of the minutes. But it just so happens that I was not asked to attend those meetings and I was not there. I don't think I really inquired a thunder of a lot into it, that is, as to the actual details in it.

Q. Do you still get copies of the minutes of the Employees' Representative meetings?

A. I am supposed to as management representative. I am supposed, as management representative, to be advised of such matters as they want to send me.

Q. Are you still the management representative?

Mr. SKINNER. Let him finish the answer.

Mr. BLUM. I thought he had.

The WITNESS. I said I don't—that I can kick a whole lot if I did not get one. But I assume I always have and I assume I always will.

By Mr. BLUM:

Q. Have you been getting them lately?

A. So far as I know I have been given copies of all the meetings being held.

Q. You are still the management representative?

A. Yes. I was so designated.

Q. What are your duties as such management representative?

A. To be available with representatives of the employees to take up with me any matters they see fit to take up.

Q. Are there any other management representatives?

A. No. I am the management representative.

Q. Were you present at the time Mr. Woodward suggested the changes to Mr. Blanton in Mr. Blanton's revised plan?

A. That was in my office. Mr. Blanton came to talk to me and ask as to what would be the management's position so he would be advised, and I said that maybe we had better get the management to give us that; I might go out on a limb.

I called him up and he said he would just as soon come down. He said he was going down to the yard, I think, and we sat there and had an informal talk.

Q. Do you know whether or not those minutes are mimeographed, multigraphed or typed?

A. I don't know. It has always been the Secretary's job to get out the minutes. He puts them out. I don't know.

Q. The last copy of the minutes that you got, was it in any different form than any other minutes you ever received?

A. I couldn't answer, because I don't know that I noticed it. It might have been, but I don't know that I noticed it. I don't know anything about it.

Q. Do you know where they are gotten out by the Secretary of the Employees' Representative Committee?

A. No, sir; I really don't know where he does the actual work or who helps him, and I have never asked that I know of.

Q. Have you seen these [indicating]?

A. That looks like the usual copy of the minutes [indicating].

Q. And is that like the last minutes of the meeting, or is that like the last copies of the minutes that you saw?

A. I don't recall, because I would merely have looked at it to see what happened. I couldn't say. To tell you the truth, I don't know whether that is mimeographed or not [indicating]. I mean I cannot tell you.

Q. Have you received any copies of company communications in the same kind of print? Or the same color of print?

A. I don't know that I can answer that specifically.

Q. In any sort of memorandum at all from the company?

A. Most of the memoranda I get, I get the originals of. I get a typed memorandum. We have to put up notices on the bulletin boards and those things have been generally distributed notices. Some of them I have written myself. We send them to the superintendent's office, or my secretary does, and I assume that are mimeographed or reproduced in some way. That is our usual procedure. I suppose in the main office in the correspondence department they have some way of sending out a lot of copies. Being down in the yard I deal with the others.

Q. The memoranda you have gotten out for posting on the bulletin board about company business, have you seen them after they were prepared?

A. I suppose I have noticed them on the board. What I have seen have been the originals.

Q. Have you seen those on the board with this same type and this same color of printing?

A. I venture to say that I have. And I wouldn't mind admitting it if I had; but I don't want to be cut with short hair, you know.

1095 Trial Examiner PARADISE. Mr. Blum, am I mistaken in my recollection that Mr. Blanton testified that those were prepared in the company office?

Mr. BLUM. His testimony was that someone prepared them in the office and was not being paid for doing it. If I knew I would say

so, but I really don't know. I don't see any particular reason for not saying so, but I really don't know.

That is all.

By Mr. KEARNEY:

Q. Let me ask you this question, Mr. Robeson. There is a charge in the complaint filed in this matter that the labor dispute existed on June 4th, and the amended complaint charges June 12th of this year. As far as the yard is concerned, Mr. Robeson, were you advised of any labor dispute that existed there in the yard?

A. No, sir.

Q. On either one of those dates?

A. No, sir.

Q. Or any labor dispute that exists now?

A. No, sir.

Mr. KEARNEY. That is all.

Mr. BLUM. That is all.

Mr. SKINNER. That is all.

(Witness excused.)

1101 ○

### *Stipulation*

Mr. KEARNEY. We are pleased to say that, by the consent of counsel, we have agreed on certain stipulations that will eliminate the introduction of considerable evidence, so far as the intervenor is concerned, and will save considerable time; and this is the stipulation:

1102 "For the purpose of expediting the hearing it is stipulated and agreed between counsel for all of the parties hereto, without waiving any objections heretofore taken regarding either the jurisdiction of the Board or admissibility in evidence of any matter prior to July 5th, 1935, that the following is the evidence which will be submitted without contradiction for the intervenor with respect to the Employees Representative Plan of the Newport News Shipbuilding and Dry Dock Company from which the Trial Examiner, the National Labor Relations Board or any court may determine the questions in issue:

"1. That the Employees Representative Plan was adopted in 1927 by a vote of 2,430 employees for the plan and 204 against the plan. That the Plan was submitted to the employees of the Newport News Shipbuilding and Dry Dock Company for their adoption or rejection of the Plan after negotiations had been entered into between the management and representatives of the employees in order to put the Plan into effect.

"2. That from 1927 to the present the employees selected their representatives from the various districts by nominations and elections participated in only by employees below the rank of leading man and that none of the employees that participated in the election occupied any supervisory position.



"3. That the shipyard did not interfere with, select, discourage, encourage, or in any way prevent the selection of representatives by the employees of representatives of their own choosing.

"4. That the entire shipyard for the purpose of the nominations and election of the representatives was divided into geographical districts so as to give each craft and each group of workmen a representative.

"5. That there has been elected in accordance with the employees representation plan in force at the time of the election, by a majority of the employees of the Newport News Shipbuilding and Dry Dock Company (5,718 out of 6,300 eligible employee voters present at work on the day of election June 15, 1937) 43 representatives, 28 white and 15 colored, to serve as representatives from July 1, 1937, to June 30, 1938, and that these representatives compose the Employees Representative Committee.

"6. That the time and place of meeting is determined by the Employees Representative Committee. Since July 1, 1937, the committee has met once a month (second Tuesday in each month) in the Athletic Building, which is built outside of the shipyard plant on shipyard property. The building is maintained by athletic membership open to the public.

"7. That prior to the election of 1935 all elections of Employees Representatives were held on Company property at lunch hour from twelve o'clock to one p. m. Since and including 1935 all elections of Employees Representatives have been held on company property from twelve o'clock noon to five p. m., with provisions for the night shift to vote as they came on duty.

"8. Any employee below the grade of leading man who has been on the company's payroll for the period of one (1) year prior to nominations, who is twenty-one (21) years of age or over, and who is an American born citizen shall be qualified for election as a representative. All employees who have been on the company's payroll for a period of sixty (60) days prior to the date fixed for nominations is entitled to vote, except company officials and supervisors from leading men up.

"Nominations and elections of representatives are conducted exclusively by the employees and in accordance with the rules and regulations prescribed by the executive committee of the Employees Representative Committee, and as set forth in the plan, nominations and elections are by secret ballot and so conducted as to avoid undue influence or interference with voters in any manner whatsoever, and to assure fairness in the counting of ballots.

"9. The ballots used in the election are printed and furnished by the employees and the election conducted by employees eligible to participate in the election and selected by the executive committee. The ballots and all expenses of conducting the election has been borne by the Employees Representative Committee since July 5, 1935, out of the funds contributed by the employees for

expenses of the committee sent to Washington in 1929 and 1930;

"10. That all copies of the contract of principles of employees' representation, which is in evidence as Board Exhibit No. 1-K, adopted May 20, 1937, effective June 30, 1937, between the Employees and the Company have been printed at the expense of the Company and on request the company has furnished copies of the Plan to other industries, associations, educational institutions, and government agencies.

"11. That prior to adoption of the revised plan on May 20, 1937, to become effective June 30, 1937, the Employees Representative Committee met with a committee of similar number appointed by the management from employees of the shipyard irrespective of their position. That the appointed committee and the elected representatives formed the general joint committee.

"12. That in the election of June 1937, a majority of the employees eligible to vote participated in the election in each district and that the elected representative was selected by a majority of the eligible voters participating in the election.

"13. That employees from each district will testify without contradiction: That he is an employee of the yard. That there 1106 was no interference in any way by the management in the selection of the representative from his district. That he is a member of the Employees Representative Plan. That no dues are charged. That he believes the majority of the employees in his district desires the Plan to be continued. That he believes that the majority of the employees in his district are satisfied with the Plan and with what has been accomplished under it and that the management has always been willing to negotiate with the Employees Representative Committee in regard to any matter affecting men, wages, hours, and conditions under which they work and that they are not aware of any action on the part of the management to discourage membership in any union by any officers or persons in a supervisory capacity of the shipyard."

Mr. BLUM. I have agreed to this stipulation, as has counsel for the respondent, with one condition attached, that with respect to paragraph 10, which has been read, it shows the plan was adopted on May 20th, to take effect June 30th. In view of the fact that Board Exhibit 1-K specifically states that the plan was adopted June 30th, I have made it a condition of accepting that paragraph that counsel for the intervenor will introduce in evidence a copy of the minutes of May 20th of the Employees' Representation Committee, together with a copy of the original plan that was first introduced that night, and then revised. With that provision I have agreed to the 1107 stipulation in its entirety.

Trial Examiner PARADISE. Do you mean the bare introduction of those exhibits, or that there is to be testimony concerning them?

Mr. BLUM. I have not stipulated as how counsel shall do it. I am not limiting him. If he wants to put in testimony to that effect it is all right with me.

Mr. SKINNER. The respondent agrees to the stipulation.

1110 Mr. KEARNEY. Mr. Trenwith.

P. J. TRENWITH, a witness called by and on behalf of the Intervener, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. KEARNEY:

Q. Will you state your name and residence?

A. P. J. Trenwith, Shipyard.

Q. Where do you live?

A. At the Perkins Court, 101 Thirty-fifth Street, Apartment No. 2.

1111 Q. How long have you lived in the City of Newport News?

A. Thirty-nine years the next November.

Q. Were you ever employed by the Newport News Shipbuilding and Dry Dock Company?

A. For thirty years.

Q. In what department were you employed there?

A. In the blacksmith shop.

Q. You were there for thirty years?

A. Sir?

Q. You were there for thirty years?

A. Yes, sir.

Q. Do you remember what year you went to work there?

A. No, sir—yes. I went there in November.

Q. You went there in November?

A. Yes, sir.

Q. Do you remember when you were retired?

A. Yes, sir.

Q. What year was it that you were retired?

A. I was retired in 1928.

Q. Now you worked there from 1898 to 1928?

A. Yes, sir.

Q. And you worked in the blacksmith department there during that time?

A. Yes, sir.

Q. Since 1928 have you lived in the City of Newport News?

1112 A. Yes, sir.

Q. All the time?

A. Yes, sir.

Q. How was your relationship with the Shipyard severed in 1928? Were you retired at that time?

A. Yes, sir.

Q. And you are now a retired employee?

A. Yes, sir.

Q. Mr. Trenwith, will you state whether during the 39 years that you have lived in Newport News there have been any labor diff-

culties that have interfered with the operation of the Newport News Shipyard, or not?

A. No, sir.

Mr. BLUM. That is objected to. I move that the answer be stricken.

The WITNESS. At one time—

Mr. KEARNEY. Wait a second.

Trial Examiner PARADISE. The objection is overruled.

By Mr. KEARNEY:

Q. What was your answer to that question? I asked you whether during the 39 years you have been there, there has been any labor difficulty or dispute, interfering with the orderly operation of the shipyard.

A. No, sir.

1114 E. D. FENTON, a witness called by and on behalf of the Intervener, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. KEARNEY:

Q. Give your name and your residence.

A. E. D. Fenton, 551 Thirtieth Street, Newport News.

Q. Where are you employed?

A. At the shipyard.

Q. In what department?

A. Ship fitters.

Q. How long have you been employed in the shipyard?

A. Forty-three years.

Q. In what capacity do you work? Do you work with your tools, or do you occupy some supervisory position?

A. I work with my tools.

Q. Will you state whether during the 43 years you have been employed there in the shipyard, and during the time you have lived in Newport News, there has been any labor dispute or difficulty  
1115 that has interfered with the orderly operation of the shipyard?

A. I have not—

Mr. BLUM. That is objected to.

Trial Examiner PARADISE. The objection is overruled.

By Mr. KEARNEY:

Q. I did not get your answer.

A. I have not heard of any trouble, or anything to stop us from operating.

Mr. KEARNEY. All right.

Mr. BLUM. No questions.

Trial Examiner PARADISE. Step down.

(Witness excused.)

Mr. KEARNEY. Mr. White.

R. G. WHITE (Colored), a witness, called by and in behalf of the Intervener, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. KEARNEY:

Q. What is your name and what is your residence?

A. R. G. White, R. F. D. #1, Hampton.

Q. Are you employed in the Newport News Shipbuilding & Dry Dock Company?

A. Yes, sir.

Q. How long have you been employed there?

A. I have had two shifts of it. I was in the yard from 1909 to 1911 and again from 1913 to the present time.

1116 Q. You have been employed there continuously since 1913?

A. Continuously; yes, sir.

Q. During the time that you have been employed there do you know of any labor disputes or difficulties that have interfered with the orderly and usual operation of the plant?

A. I do not.

Mr. BLUM. That is objected to.

Trial Examiner PARADISE. The same ruling

By Mr. KEARNEY:

Q. I believe you are a member of the Employees' Representative Committee, are you not?

A. Yes, sir.

Q. How long have you been on that committee?

A. Every year since 1927.

Q. What department do you represent, or what district do you represent?

A. District No. 40, the blacksmith shop and boiler shop.

Q. What is your trade?

A. Bricklayer.

Q. During the time that you have been on the Employees' Representative Plan, have you found that the officials of the yard, and the management, generally, were willing to negotiate and cooperate with the Committee in regard to matters affecting the men; the hours, and the conditions under which they were working?

1117 A. I have found them very fair. I have been elected every year, and have no right to complain.

Q. In matters that have arisen in your district affecting the men, hours, or conditions under which they work, have you been able to negotiate with the management in regard to those things?

A. To the extent that I have had 100 percent vote as representative.

Q. You mean everybody in your district?

A. Everyone who voted.

Q. I see. Has there been any discrimination, as far as you were concerned, because of your position as representative, because of the different matters that you have taken up with the management in behalf of the men, or affecting the conditions under which you work?



A. Not any.

Mr. BLUM. That is objected to.

Trial Examiner PARADISE. I do not see that that matter is in issue.

Mr. KEARNEY. I think that is the charge made here, and we have a right to show just what has been the—what are the conditions or relations between the employer and the employee.

Trial Examiner PARADISE. I mean, even if you took it from 1118 the Board's viewpoint, assuming the charge is true, that it is an organization sponsored and fostered and encouraged and supported by the management, the Board would certainly not contend that the management discriminated against the employees in its plan, assuming the charge were true. It seems to me you are setting up a straw man and throwing him down.

Mr. KEARNEY. I am trying to prove what the conditions have been, between the employees and the employer. That is what I am trying to establish, and I think I have a right to show it under the charges in this complaint.

Trial Examiner PARADISE. Go ahead. I will let it stand.

By Mr. KEARNEY:

Q. Are the majority of the men in your district satisfied with the plan that is in operation now?

A. They are.

Q. Are you able to state whether a majority of the men in your district desire this plan to continue or not?

A. They do.

Mr. KEARNEY. Cross examine.

Cross-examination by Mr. BLUM:

Q. How do you know whether the men in your district are satisfied with the plan and desire it to continue?

A. Because of their votes.

1119 Q. What votes?

A. The votes for representatives.

Q. Have you consulted with them all around?

A. I do.

Q. When?

A. I do every year.

Q. When was the last time you consulted them?

A. The present year.

Q. Just before the election in June?

A. Just before the election in June.

Q. How many men are there in your department?

A. About sixty.

Q. You talked with every one of them, did you?

A. I talked with them collectively.

Q. What is that?

A. I talked with them collectively.

Q. Where?

A. In groups in the shop, or any place.

Q. How many men in a group?

A. I say there are 60 of us.

Q. You talked to them in groups. How many would there usually be in a group to which you talked?

A. The whole body assembled.

Q. You mean that you talked to all sixty of them at one time?

1120 A. I called them together.

Q. Where?

A. In the shop; in our recreation building.

Q. During working hours?

A. No, sir.

Q. When?

A. Noon hours.

Q. In the recreation building?

A. The recreation building; after noon hours. That is out of the yard.

Q. How far is that from your place of employment?

A. That is on Thirty-fifth Street.

Q. You say that that is on Thirty-fifth Street?

A. Yes, sir.

Q. Where are you employed?

A. Oh, they are in the shipyard.

Q. How far is that from Thirty-fifth Street?

A. It is on Thirty-fifth Street. The shipyard is near Thirty-fifth Street; about six blocks, and we have our meetings there.

Q. Did you have a meeting just before the election in June 1934?

A. I did.

Q. Did you ask the men then if they were satisfied with the plan?

1121 A. I did.

Q. Why did you ask them?

A. Why did I?

Q. Yes.

A. I wanted to know, if they are not satisfied, there would not be any use—

Q. What was your reason for asking them on that occasion whether they were satisfied with the plan?

A. To find out.

Q. Why did you want to find out?

A. For my own satisfaction.

Q. I see. Did anybody give you any reason to believe that there was danger in the plan?

A. Not at all.

Q. Did anybody tell you that the plan was in danger of going up?

A. No, sir.

Q. Of your own volition you just asked them if they were satisfied with the plan?

A. Yes, sir.

Q. How many were at that meeting?

A. The majority of the men.

Q. How many?

A. I could not say offhand: I did not count them.

Q. How do you know that it was a majority?

1122 A. I know when I have a majority.

Q. Can't you tell us how many there were?

A. Not unless I counted them.

Q. You are guessing that you had a majority?

A. I know it.

Q. How do you know it?

A. You can look at a crowd and estimate how many are in it.

Q. How many did you estimate at that meeting?

A. At least 45.

Q. What else did you talk about that night before the election, at that meeting?

A. What else?

Q. Yes.

A. We talked of many things.

● Q. What was the purpose of the meeting?

A. All the representatives have their meetings and discuss what is going on in the plan and give their views on what they want done. Those are regular monthly meetings.

Q. At that particular meeting do you recall very definitely that you asked the men what their opinion of the plan was?

A. My district is organized. I do not canvass for votes. One man will come to me and request me to run, or ask if I will run, and I consent. Well, then, I don't know any more about it, because I have never canvassed a vote, but we have our regular 1123 monthly get-together meetings and we discuss the work, and the outlook for the year, and anything that would be of interest to the workers.

Q. That is right. Did you state at this meeting before June 1937 that you asked the men how they felt about the plan?

A. I did.

Q. Did you take a vote on their opinions?

A. No, sir. We took it in June.

Q. That was a vote for representation, was it not?

A. Yes, sir.

Q. Did you ever have a vote of the men as to how they felt about the plan?

A. Not unless it is doubtful. If half one way and half the other way, then we vote to find out which way.

Q. Have you ever had a vote as to what they thought of the plan?

A. Never except in June.

Q. That was for representation?

A. That was for the plan.

Q. That is, for representatives, is it not?

A. It is also for the plan. If we did not have it we would not vote.

Q. In your department, you mean?

A. Yes; in my department.

1124 Q. Did you ever discuss with the men how they felt about continuing the plan?

A. Yes.

Q. When was that?

A. I don't recall, because we have our meetings monthly.

Q. You don't recall at which monthly meeting you discussed that with them, do you?

A. I can't say that I do.

Q. Were you at the meeting of the representatives after June 30, 1937, when the Chairman of the Plan was voted on?

A. I was in all of them.

Q. What did you say?

A. I say I attended all of them.

Q. Did you vote for the Chairman of the Plan this year?

A. I did.

Q. When?

A. In the meeting.

Q. What meeting?

A. Didn't you say the meeting of June 30th?

Q. Yes.

A. I did.

Q. Do you recall any meetings this year in which the colored representatives were taken out of the room while the white representatives voted?

1125 A. There was no such meeting.

Q. You are sure of that?

A. Yes.

Mr. BLUM. No further questions.

Mr. KEARNEY. That is all.

By Trial Examiner PARADISE:

Q. I am not clear on one thing. Are these monthly meetings that you are talking about, the meetings of the representatives or the meetings of the men in your department?

A. Those are the meetings of the men in my department.

Q. You have monthly meetings of those men?

A. We do not have regular monthly meetings, but we gather whenever we think it is necessary.

Q. When you say that the plan was approved at a meeting did you refer to the meeting of the elected representatives, or it was a meeting of the men in your department?

A. The men in my department.

Q. When was that?

A. I don't know. It was previous to the election. It was before the election.

Q. When was the election?

A. It was the second Tuesday in June.

Q. How long before that was it?

A. I don't know. I can't remember dates, because we don't have those.

1126 Trial Examiner PARADISE. All right.

Mr. BLUM. One further question.

By Mr. BLUM:

Q. Were you ever in a meeting of the representatives when Mr. Keith ran against Mr. Blanton for chairman of the committee?

A. I was in the meeting when they elected a chairman.

Q. Was Mr. Keith a candidate against Mr. Blanton at that time?

A. Yes.

Q. Was that the last meeting?

A. That was the meeting of an election—that was an organization meeting.

Q. I mean after June of this year. Is that right?

A. That was since then; yes, sir.

Q. Do you recall that at that meeting the colored representatives were called out of the room?

A. No, sir; because it was not done.

Q. Weren't you called out of the room?

A. No, sir.

Mr. BLUM. All right.

Redirect examination by Mr. KEARNEY:

Q. I understood you to say in answer to a question by Mr. Blum that your department is organized?

A. What I meant is that they get together, unbeknown to me, and they decide what they are going to do.

1127 Q. I see. You get the men in your department—or the men in your department have monthly meetings at the recreation center, which is off of the government property. Is that right—colored recreation center?

A. They are scheduled for any date they meet down there; something like once a month.

Q. It was on this occasion that you discussed the plan with them and they expressed satisfaction with the plan?

A. Yes, sir.

Q. Did you point out to them the changes that the plan, effective June 30, 1937, had in it?

A. Yes, sir.

Q. Well, now, it is in evidence that the changes in regard to the plan were discussed at meetings in May. Was it after those discussions and before the election that you had this conference with these people in your department?

A. It was.

Q. Did you take up with the people in your department at this meeting and at these meetings the changes in the plan?

A. Yes, sir. We always convey the results of the meetings. We tell the men what is going on. We keep them posted on everything that is going on.

Q. You keep your men advised as to what goes on in the committee meetings?

A. Yes, sir.

1128 Mr. KEARNEY. That is all.

Recross examination by Mr. BLUM:

Q. Do I understand you correctly when you say you discussed this with your people at this meeting, that you were talking about these proposed changes in the plan?

A. Yes, sir.

Q. And you asked their opinion about these changes, did you not?

A. Yes, sir.

Q. Did you ever ask them if they wanted to continue with the plan in its entirety?

A. I did.

Q. At that same meeting?

A. I did.

Q. Did you take a vote on it?

A. I did not take a vote on it. I said about 45 were present, and they approved it.

Q. How do you know they approved it? You took no vote?

A. Anything—I consider—that has no opposition, when you put something before people and they make no effort to reject it, they give their consent.

Q. Therefore, because nobody got up and said anything against the plan itself—

A. Yes.

1129 Q. That is why you answered Mr. Kearney's question that you believed that your people were in favor of the plan and wanted to continue it?

A. I do not understand that he said believe.

Q. That is what Mr. Kearney asked you?

A. I know they are.

By Mr. KEARNEY:

Q. Has anybody in your department expressed any dissatisfaction with the plan as it now exists?

A. Not to me; no, sir.

Mr. KEARNEY. That is all.

Mr. BLUM. That is all.

(Witness excused.)

IRVING CLARK WILKINS, called as a witness by and on behalf of the intervener, having been first duly sworn, was examined, and testified as follows:



Direct examination by Mr. KEARNEY:

Q: Will you state your name and residence?

A. Irving Clark Wilkins, Warwick County.

Q: Where are you employed?

A. Newport News Shipbuilding and Drydock Company.

Q: How long have you been employed there?

A. I have been with the company since around the first of December, 1919, with the exception of a couple of months.

1130 Q: What is your employment in the plant?

A. I am a draftsman.

Q: Do you occupy a supervisory capacity?

A. I do not.

Q: When did your position, and my position here might be straightened out—you were secretary of the Employees' Representative Committee, were you not, and still are?

A. I am.

1131 By Mr. KEARNEY:

Q: You have been secretary of the Employees' Representative Committee for how long?

A. This is my fourth year.

Q: You are the custodian of the records of that committee, are you?

A. I am.

Q: The present committee was elected when?

A. In June 1937.

Q: And it was to serve as representatives for what period?

1132 A. From July 1, 1937, to and including June 30, 1938.

Q: There are 43 representatives. Is that correct?

A. That is correct.

Q: 28 white representatives and 15 colored representatives?

A. I think that is correct.

Q: The plan that has been introduced in evidence shows that the committee designates the time and the place of the meeting. Is that correct?

A. That is correct.

Mr. BLUM. There are several in evidence. Are you referring to Board's Exhibit 1-K?

Mr. KEARNEY. That is the one I am referring to, the one in effect now.

1132 By Mr. KEARNEY:

Q: Let me ask you this, when was the revision made, the last revision, of the Employees' Representation Plan? Can you tell me that?

A. The final adoption of it occurred on May 20, 1937.

Q: Do you have a copy of those minutes there?

A. I do not.

Q. Are they in this (indicating)?

A. They are in the records.

Q. When was the new plan to become effective?

A. The new plan was to become effective June 30th.

Q. 1937?

A. 1937, yes, sir.

Q. I hand you this paper, along with others, Mr. Wilkins, entitled, "Minutes of the General Joint Committee, Thursday, May 20, 1937," and ask you if that is the original of the minutes of the meeting of May 20, 1937.

A. The original?

Q. Is that the original there?

A. No; it is not the original.

Q. Is that a copy of the original?

A. It is.

Q. You prepared those?

A. Yes, sir.

Q. And had them typed or printed, or whatever that is there?

A. That is right.

1133 Q. And attached to the minutes is a copy of the revised plan adopted at that time?

A. That is right.

Mr. KEARNEY. I might say to the Examiner that they are the minutes that Mr. Blum and I agreed would be introduced, together with a copy of the revised plan.

Mr. BLUM. No objection.

Mr. KEARNEY. I will ask permission to introduce them as an intervenor's exhibit, and to make a copy of them.

Trial Examiner PARADISE. These are the copy, as I understand it.

The WITNESS. No; that is the plan—

Mr. KEARNEY. That is the only copy he has.

The WITNESS. A bona fide copy.

Trial Examiner PARADISE. Do you want to detach this from the pages [indicating] so we can mark it?

Mr. KEARNEY. I want to make a copy of it and introduce it, and also a copy of this—of that revision there made at that time, which forms a part of the minutes.

Trial Examiner PARADISE. The only thing I want to know is, you have offered something in evidence. Do you want it marked?

Mr. KEARNEY. I do not want it marked at this time. I want to introduce it at a later time.

Trial Examiner PARADISE. All right. You can do that then.

1134 Trial Examiner PARADISE. So that counsel may have the full use of those minutes we will consider that those are in evidence now, and they will be formally offered and marked, and you will get a copy.

By Mr. KEARNEY:

Q. Mr. Wilkins, you were employed in the shipyard in 1927 when this Representation Plan was adopted by the employees, were you?

A. Yes, sir; I was.

Q. Do you know the vote by which this plan was adopted, Mr. Wilkins?

A. It has been reported to me since I became a member of the Committee, or I secured a copy of the results of it.

Q. This is a copy of the results? [Indicating.]

A. It is.

Mr. KEARNEY. Do you have any objection to my offering this?

Mr. BLUM. No.

Mr. KEARNEY. I offer it to show the results of the election. I offer it as an exhibit.

Trial Examiner PARADISE. Is there any objection?

Mr. BLUM. No objection.

Trial Examiner PARADISE. Let it be marked "Intervener's exhibit No. 2."

(The document above referred to was received in evidence and marked "Intervener's exhibit No. 2.")

By Mr. KEARNEY:

1135 Q. You have been a representative of your district for how long on the Employees Representative Committee?

A. I am now on my fifth year.

Q. I believe you are the Secretary of the Employees Representative Committee, are you not?

A. Yes, sir; that is right.

Q. How long have you been occupying that position, Mr. Wilkins?

A. I was secretary of the General Joint Committee for three years.

Q. And you have been secretary of the election committee since they have gone into operation?

A. Yes.

Q. On June 30th?

A. Yes, sir.

Q. Who prepared the minutes of the meetings during the three years or more that you have been Secretary?

A. I did.

Q. Has there been an influence by the management or by the employee or employers, so far as you were concerned, with regard to the making of the minutes?

A. There has not.

Q. Who shapes up the minutes of the meeting? Or who types up the minutes of the meeting?

A. I type them up.

Q. You take notes as the meeting progresses?

1136 A. Yes.

Q. Where do you type them up?

A. At home.

Q. After you type up the minutes at home, then what do you do? Do you have any copies of them made?

A. Yes, sir.

Q. Who makes those up or how are they made up?

A. I bring them to the shipyard with me usually the following morning and I take them to the correspondence office there and tell the man in charge of that office how many copies I require, and then the copies are supplied to me.

Q. Do you have any difficulty in getting the people there in the yard to write a letter for you personally or make a copy of a letter for you personally, if you so desire?

A. None whatever.

Q. And certainly since you have been secretary you prepared the minutes in the first instance, and then you have the copies made there in the yard?

A. That is right.

Q. Do you know Mr. Rayfield, who testified in this hearing?

A. Yes, sir; I know him.

Q. Do you remember his testimony in regard to some propositions that he brought up before the Employees Representative Committee he was unable to get any action on?

A. I think I recall Mr. Rayfield's making some testimony in that regard.

Q. Do you have any record in the minutes there as to his bringing up that subject, Mr. Wilkins?

A. There is.

Q. Will you turn to it and read from the minutes the action that was taken on that proposition that was submitted by Mr. Rayfield?

A. Mr. Rayfield was on the committee for two years and there were one or two items that Mr. Rayfield brought up at that time, and it will take me some little time to find it.

Q. March 1935, I think it is.

Well, suppose we pass that by, and let me ask you this question. Mr. Wilkins. You are referring to Board's exhibit 1-K, are you? Are you familiar with this book?

A. Yes, sir; I am.

Q. What does that represent, Mr. Wilkins, so far as the employees in the yard are concerned? What is their understanding of that?

A. That is a contract between the management of the yard and the employees, together with the conditions and plan of operation of correcting any unsatisfactory conditions under which the employees work.

Q. Pursuant to the contract as you have it stated there, what action has been taken by the yard and by the employees to put that into effect?

A: This year the duly elected representatives of the employees, during the early part of the year, together with the appointed representatives of the management, thought that some provision in the agreement might be made in order to bring it within the letter as well as within the spirit of the Wagner Act, as we understood it.

The question of change in the agreement came up in the General Joint Committee and the matter of the changes was referred to the Executive Committee, it having been the policy, when changes were contemplated in the agreement in the past, to do that.

What transpired in the Executive Committee I am not prepared to say because I am not a member of that committee. I did appear before the committee and express my views on some of the changes.

Following which the executive committee presented to the General Joint Committee at its next meeting a copy of the revised plan. The General Joint Committee then referred the plan as proposed by the executive committee to a meeting of the elected representatives.

The elected representatives made some changes in the plan and presented it back to the General Joint Committee at an adjourned meeting of that committee. When the plan was read over by the secretary several modifications were made, following which the plan was adopted as a whole as amended.

Q. I understand that that agreement or arrangement was agreed to by all of you as representatives of the employees and by the management.

A. That is correct. The management representatives at that meeting stated that the agreement was acceptable to the management.

Q. And have you all been working under the revised plan since June 30, 1937?

A. We have been.

Trial Examiner PARADISE. Do I understand, Mr. Kearney, that you are now using that or assuming that as the contract?

Mr. KEARNEY. Yes, sir. It is my position that the plan is the contract between the employees and the management. We think the preamble so states that.

Trial Examiner PARADISE. Do I understand it to be your position that you claim that this organization, which you say is free from any domination or control by the management, is in itself a contract between the workers and the management? Is that your position?

Mr. KEARNEY. It is my position that this booklet sets out the terms and sets out the agreement between the management and the employees' representatives for the purposes of bargaining with whom they wish to bargain and the method under which they are selected.

Trial Examiner PARADISE. I just wanted to make sure I was not laboring under a misunderstanding.

The WITNESS. I have now found those minutes, Mr. Kearney.

By Mr. KEARNEY:

Q. We will refer back to that proposition regarding Mr. Rayfield. I think I asked you if Mr. Rayfield brought any matter to the atten-



tion of the Employees Representative Committee with reference to the conditions under which the men in his district were working and what action was taken on it.

A. In February 1935 my records show that D. C. Rayfield, District No. 11, presented a letter to the committee relative to the inadequate heating arrangements in the ship carpenter's office. The secretary was instructed to forward same to the Plant Engineers for attention.

At the following meeting, in March, D. C. Rayfield, District No. 11, reported that satisfactory heating arrangements for the ship carpenter's office had been made.

Q. Pursuant to the arrangement there between the management and the employees, Mr. Wilkins, have the Employees' Representative Committee negotiated with or taken up with the management any questions affecting the working hours or conditions under which the men work?

A. They have done so.

1141 Q. Will you give us some instances of that, please, sir?

A. Well, my latest recollection is an item under the new plan or under the new agreement under which we are now working. When the appointed representatives were done away with difficulties in our operations were increased somewhat, particularly as to matters that came up within the committee and for the prompt correction of them.

The committee reported in regard to the 40-hour work week and the allowance of overtime for the hourly employees, per diem in excess of 40 hours. That came before the new committee and, being secretary of the committee, I forwarded those recommendations to the management representative, and subsequently I received copies signed by the General Manager putting into effect the recommendations of the committee.

Q. With reference to that, before you pass on to anything else, Mr. Wilkins, the men themselves wanted the hours increased from 36 hours to 40 hours? Is that correct?

A. No, sir. This was in connection with their overtime status for them after the 40-hour week.

Q. All right, sir. Now, what other instances do you have in mind which the management took up with the committee or the representatives of the men, on questions which came to the attention of the men about conditions under which you worked?

A. This year the General Manager of the Company appeared  
1142 before the committee and told the committee whereby the

Government contract had been changed so that it would permit them to work 40 hours on government work if they wished to do so, and the committee voted at that time to adopt the 40-hour work week; and it was put into effect.

On numerous other occasions the management has appeared before the Committee. I remember particularly one case. I had just been on the committee a short time when this occurred, back in

1933, when the N. R. A. code for the shipbuilding industry was first adopted.

Incidentally, we sent the chairman of our committee to Washington to the hearings at the adoption of that code.

The President of the company appeared before the committee and explained the code and how the management proposed to put the code into effect in the year.

The general manager was also present before the committee at that time. And there were a great many questions and answers as to how it would apply in the different departments and districts of the yard, as to how it would be carried out; following which there were discussions as to the rates and wages that would apply, the hours in which the men would work, and so on. I myself offered a motion that the plan be adopted; and we would pledge our cooperation towards working out any difficulties which might arise under the plan.

1143 Those are just a few of the instances dealing with the work of the committee between the management and the men.

Now, there are any number of other instances in which the Representative Committee has sponsored and carried out projects for the benefit exclusively of the employees. One of which I have in mind is one of our latest arrangement in the yard whereby we established a shipyard benefit relief fund for the relief of shipyard workers who, because of their lack of collateral, were unable to secure loans or money to have performed necessary hospital service, and for other emergency expenses.

Prior to that time—and I think it was in 1935—the Committee sponsored the collection from the employees of the yard of funds to contribute to employees or their families a sum of money to be used for emergencies occurring at Christmas time.

On that occasion my recollection is that there was raised by popular subscription something over five thousand dollars.

In the past year or so, as a result of an occurrence in which one of our employees in the yard nearly lost his wife in a case of pneumonia, it was discovered that there wasn't available on the peninsula for use in the treatment of these types of sickness, I was instrumental, together with other members of the committee, 1144 in having secured and placed in the hospitals on the peninsula two oxygen tanks. While that is a small item, in the past winter I understand it has been instrumental in saving the lives of several people, at least.

Those are just a few instances that have occurred.

Q. Let me ask you this question: is there a vacation period allotted to the hourly employees of the yard, Mr. Wilkins?

A. There is.

Q. How was that affected?

A. That was brought about by the members of the committee bringing to the attention of the yard the lack of any vacation al-

lowance to hourly employees. And after investigation a recommendation by the committee a one week's vacation with pay was allotted each hourly employee who had been with the company for a period of five years.

By Trial Examiner PARADISE:

Q. When was that done?

A. How is that?

Q. When was that done?

A. It was last year.

Q. In 1936?

A. Yes, sir; that was in 1936.

By Mr. KEARNEY:

Q. During your service on the committee, Mr. Kearney, have you been able to negotiate with the management for increased pay for men in your district?

A. I brought it to the attention of the heads of my department about a proposed or tentative order that was about to be issued by the management, calling attention to the discrepancy; and the order was withdrawn and a new order issued with regard to it. So that the increased pay would be effective so far as the men in your district were concerned?

A. That is correct.

By Trial Examiner PARADISE:

Q. When was that, Mr. Wilkins?

A. 1933.

Mr. KEARNEY. I believe that is all.

By Mr. BLUM:

Q. Mr. Wilkins, we have discussed this little booklet which is Board Exhibit 1-K. When was the first time you ever heard that called a contract or an agreement?

A. When was the first time?

Q. Yes.

A. I can't say.

Q. Have you ever heard it called a contract or agreement prior to this hearing?

A. Yes, sir.

Q. By whom?

A. It was so considered.

Q. By whom?

A. By me.

1146 Q. You said it was generally known to the employees in the Shipbuilding Company that it was known as a contract or agreement. How do you know that?

A. Well, it is because they operate under it.

Q. Can you show me one word in this booklet that calls it an agreement or a contract?

A. It says, "The following rules are hereby adopted."

Q. The rules are adopted?

A. Yes.

Q. By whom?

A. By the management and the employees.

Q. And that is an agreement or contract, so far as you are concerned? Is that right?

A. Yes, sir.

Q. And you understand that the other employees think of it in the same way because of those words?

A. I don't know whether they all think of it in that way because of those words.

Q. Didn't you testify on direct examination that it was generally known in the yard that that booklet represented an agreement between the management and the employees?

A. I think it is.

Q. You think it is generally known?

A. Yes.

Q. How do you know that? What makes you think so?

1147 A. Because of the work that has been accomplished under it and the benefits that have accrued to the employees under the Plan.

Q. Can you show me one sentence or one clause in that booklet where the company agrees to do anything?

A. Why, surely I can.

Q. Will you show it to me, please?

A. It not only says agrees, but it says the company shall appoint a management representative or representatives.

Q. The company shall appoint a management representative?

A. Yes.

Q. Can you show me where the company agrees to do anything with respect to conditions of employment, wages, and hours?

A. I think Article VII would be right interesting along that line.

Q. Will you read it?

A. How is that?

Q. Will you read it, please?

A. It gives the procedure for the adjustment of any matter which any employee may wish to take up with the management.

Q. That is right. Does the company agree to do anything about it?

A. They have agreed to it.

Q. Do they do it in that booklet?

1148 A. Maybe not in the booklet; but they certainly have in their working of it through the Committee.

Q. As a matter of fact, in this booklet, the only thing you can point to that the management can do is to appoint a management representative? Is that right?

Mr. KEARNEY. It does not say that they can do it. It says they shall.

By Mr. BLUM:

Q. They shall under this Plan? Is that right?

A. Yes.

Q. Then in the very last paragraph, the very last statement, the company has a right to veto any amendment that the Committee makes within 15 days of its passage. Is that right?

Mr. KEARNEY. No, sir.

The WITNESS. I don't think so.

Mr. KEARNEY. Wait a minute. I object to that. That is not the language of the article.

Trial Examiner PARADISE. That is the effect of it, isn't it?

Mr. KEARNEY. No, sir. That is not the effect of it.

Trial Examiner PARADISE. Will you tell me what is the effect of it?

Mr. KEARNEY. The effect of it is that if there is any change made it becomes absolutely binding unless they agree to it within 15 days. If they do not agree to it within 15 days then the company representatives and the employees can negotiate on the proposition.

1149 Now, going back to that article—

Trial Examiner PARADISE. Just a minute before you go back to the article, please. It seems to me you are ~~not~~ splitting hairs. The last article says, after providing for the manner of making amendments by two-thirds of the entire membership of the Employees' Representative Committee, "Such amendment shall be in effect as specified by the Employees' Representative Committee unless disapproved by the Company within 15 days after their passage."

Now, doesn't that mean that if the company does disapprove within 15 days after the passage the amendment does not go into effect?

Mr. KEARNEY. Until they negotiate on the proposition.

Going over to Article VI—and it is our position in this matter, if the Examiner please, that this arrangement is eminently fair so far as the employees are concerned—it says this: That unless the management does disapprove of any action taken by the employees that it shall be binding upon them. That is in regard to any conditions that might arise.

Trial Examiner PARADISE. I believe there is a similar provision in the United States Constitution, isn't there, covering pocket vetoes by the President, that a bill becomes a law unless the President disposes it?

Mr. KEARNEY. I have read the United States Constitution 1150 several times, but I will tell you I am not prepared to say just what the effect of it is.

Trial Examiner PARADISE. Isn't this article the same as the pocket veto provision in the Constitution of the United States?

Mr. KEARNEY. No, sir; I don't think so.

Trial Examiner PARADISE. All right.

Mr. KEARNEY. In other words, I think ~~is~~, that instead of saying, as Article VI says, Section 1, the Committee may take action on



such matters as presented to their different representatives, subcommittees, or the management representatives, and the action so taken shall be final and shall become effective upon agreement by the company.

I don't think anybody could contend or would contend that an agreement that has been entered into could be changed by one party without the consent of the other party.

**Trial Examiner PARADISE.** That is very true.

**Mr. KEARNEY.** If I make a lease with you, and we stipulate in the lease that it shall be renewed at the expiration of a year automatically by my giving you notice or continuing to occupy the premises, we can make that sort of an agreement. Now, what these people have done is that they have made an agreement, because they had the right to make any changes they saw fit pertaining to any matter, and they shall become binding on the company unless the company 1151 disapproves of them within 15 days. If the company disapproves of them within 15 days then that does not mean that the matter is off; it means they are not acceptable. And then there has to be some negotiation in order to get the matter straightened out.

**Trial Examiner PARADISE.** Suppose the company does not recede from its position in the negotiations?

**Mr. KEARNEY.** I don't know anything, even in the National Labor Relations Act, which makes the company do anything except negotiate? Do you?

**Trial Examiner PARADISE.** Not at all.~ But there is nothing in the National Labor Relations Act which says the company has a right to negotiate with respect to the Constitution and bylaws of a labor union.

**Mr. KEARNEY.** No; but they can make a contract with the labor union and say, "You go ahead and get 50 percent of the employees in your organization to designate you to represent them, and we will deal with you."

**Trial Examiner PARADISE.** Let me ask you this question for the sake of argument. Suppose these employees' representatives got together and decided that they wanted to put a provision in the bylaws covering a strike, and they amended the bylaws accordingly, and then they submitted it to the management and the management sends it back and says, "We disapprove it"; then, what would 1152 happen? Do they start negotiating with the management?

**Mr. KEARNEY.** You say if they wanted to strike?

**Trial Examiner PARADISE.** Suppose they wanted to put a provision into the bylaws providing for machinery for calling a strike in the plant and the management vetoes the amendment?

**Mr. KEARNEY.** In the first place, I am going to prove by this witness, before he gets off of the stand, that the management has never objected to anything that came in there—if that is what you want to find out. But even in that instance, that is something with which he is not concerned. But I think the management has the right to say with whom he shall bargain. I think he has that right.

Trial Examiner PARADISE. Of course, they have.

Mr. KEARNEY. I think that that is all that that means. If they went in there and changed the place at which they were going to meet, or they went in there and changed the address that they were going to when they got ready to have a meeting, I don't think those things the management would have anything to do with. It would be a ridiculous proposition. But if they went in there and said that they were going to elect delegates at 2 o'clock in the morning down on the beach somewhere where they knew there would be very few people present, the management could say "that amendment would not be proper, because we don't think a majority of the 1153 employees would be there."

And that is what I think that amendment is. Of course, that is a question for argument, as you say.

Trial Examiner PARADISE. I think the words speak pretty well for themselves, Mr. Kearney.

Mr. KEARNEY. Well, I think so, too.

Mr. BERKELEY. It is a question of interpretation.

Trial Examiner PARADISE. I might correct a hasty rejoinder I made to one statement of yours, to the effect that the management has a right to deal with whomever it pleases. Of course, under the National Labor Relations Act, which happens to be the law, the management is required by law to deal with the collective bargaining agency freely chosen by the employees.

Mr. SKINNER. By a majority of the employees. And that is what the management in this case is doing.

Trial Examiner PARADISE. That is what we are trying to find out.

Mr. KEARNEY. I believe you asked me a question, did you not?

Mr. BLUM. You objected to my question.

Trial Examiner PARADISE. I believe Mr. Blum was cross-examining the witness.

Mr. BLUM. Yes; I had asked a question to which Mr. Kearney objected, which led to that long discussion.

1154 Trial Examiner PARADISE. Now, if I did not rule on your objection, it is now overruled.

Mr. BLUM. I will repeat the question to save the reporter's reading it back.

By Mr. BLUM:

Q. As a matter of fact, the only thing that the management can do under this constitution and bylaws, or which it agrees to do, is to appoint a management representative, and have the right of vetoing any of the amendments passed by the Employees' Representation Plan within 15 days of its adoption. Is that right?

A. No; I don't think so.

Q. All right. What do you say the management has a right to do under this plan?

A. I don't think that they can veto or will veto anything that might be done under it.

Q. You have read Article IX, haven't you?

A. Yes.

Q. And you know what it says?

A. Yes.

Q. That such amendments shall be in effect as specified by the Employees' Representative Committee unless disapproved by the company within 15 days after their passage?

A. Well, if it wasn't an agreement, I don't see where the company would have anything to do with it.

Q. Do you say now that it is an agreement or that it is not  
1155 an agreement?

A. I think it is an agreement.

Q. Is this the whole agreement that exists between the company and the Employees' Representation Plan?

A. That together with what the Committee has accomplished under the plan.

Q. Will you explain to us then why it is necessary to put into the plan the appointment of a management representative who shall negotiate with the Employees' representatives about any complaints?

A. Well, that is the company appointing him to take up matters that need correction.

Q. You say that is the whole agreement existing? Is that right?

Mr. KEARNEY. No; he did not say that.

Mr. MARSHALL. He did not say that.

By Mr. BLUM:

Q. That plus what has already been accomplished is the agreement? Is that right?

A. Yes.

Q. Why is it necessary to have an employer representative?

A. Why is it necessary?

Q. Yes.

A. In taking up matters of a general nature rather than those which might be of a nature applying to one particular department.

1156 Q. Is there anything in writing existing between the company and the Employees' Representation Plan with regard to wages, hours, or other conditions of employment of the employees of the shipyard?

A. The agreement in writing or the minutes which were adopted by the management representative being present, when they appointed representatives of the company and he checked the minutes of the employees. And that was adopted. The minutes have been approved and the plan has been put into effect.

Q. Is that also true since June 30, 1937?

A. Yes, sir.

Q. The management representatives are present?

A. No; no management representative has been present at any meeting since the new agreement went into effect.

Q. Aside from the minutes and aside from the printed book of the Employees' Representation, is there anything else in writing between the employer and the employee representative plan?

A. Not that I know of.

Q. Is there anything in existence between the employer and the Employees' Representative Plan which the company has signed?

A. Nothing that they have signed that I know of; no, sir.

1157 Q. You referred to certain bargaining things which the company entered into, between their representatives and the employees' representatives. You remember referring to certain things?

A. Yes.

Q. Are any of those things in the minutes?

A. I think most of them are in the minutes.

Q. Can you point to any portion of the minutes where the employees were granted increases in wages or better working conditions or better hours of employment?

A. I think I can with relation to the question of vacations with pay.

Q. How long ago was that?

A. It went into effect the 1st of January of this year.

1158 Q. The first of January of 1937?

A. Yes, sir.

Q. And that was prior to the change in the plan?

A. Yes, sir; it was.

Q. From January 1st down to the present date is there anything in the minutes whatsoever to show that there have been any conferences or negotiations between the employers' representatives and the Employees' Plan with regard to better working conditions or increased wages?

A. Yes, sir.

Q. Tell me when?

A. At the meeting in March the general manager appeared before the committee, and at that time we discussed the changes from a 36-hour to a 40-hour week.

Q. That is right. Is that contained in the minutes?

A. It is.

Q. Will you find the minutes for us? Do you have the minutes before you?

A. Yes, sir.

Q. The minutes of what date?

A. May 1st. I mean March 1, 1937.

Q. Now, Mr. Wilkins, these were the minutes of March 1, 1937?

A. Yes, sir.

Q. And that was a regular meeting, was it?

1159 A. No, sir.

Q. It was a called meeting?

A. That is right.

Q. It was for the purpose of discussing that particular plan?  
Is that right?

A. I think so.

Q. And at whose request was that meeting called?

A. The chairman instructed me to call the meeting.

Q. At whose request?

A. I don't know whose request it was. All I had to do was call the meeting at the request of the chairman.

Q. And the general manager of the company appeared at that meeting? Is that right?

A. Yes, sir.

Q. And he stated conditions in other Navy yards and Government contracts permitting a workweek change from 36-hours to 40-hours? Is that right?

A. That is right.

Q. And when the committee asked if the overtime rates would prevail over 36 hours he gave you no answer? Is that right, according to the minutes?

A. That is right, I think.

Q. Did you ever get an answer as to overtime?

A. Oh, yes; we did.

Q. When was it?

1160 A. It was at a later meeting.

Q. Is it in your minutes?

A. Yes; it is.

Q. Will you find those minutes?

A. Yes, sir.

Q. They are the minutes of what meeting?

A. April.

Q. The minutes of April what?

A. They are the minutes of April 13th.

Q. At this meeting of April 13th certain recommendations were made?

A. Yes, sir.

Q. And then Mr. Woodward appeared and granted some and denied others? Is that right?

A. I don't know of any that Mr. Woodward denied.

Q. And did you read those minutes carefully before you answered the question?

A. I don't know of any that Mr. Woodward denied.

Q. Wasn't the request as to overtime denied as to draftsmen?

A. There wasn't any request for overtime asked in regard to draftsmen.

Q. Why did the question of draftsmen come up in the minutes?

A. I merely asked the question as to those minutes if draftsmen were included as hourly employees.

1161 Q. And he said that they were not? Is that right?

A. That is right.



Q. And the question as to overtime as to them would be taken up later? Is that correct?

A. As the occasion arose; yes.

Q. Now, Mr. Wilkins, when the change was made from the 36 hours to the 40 hours, that was approved by the committee itself, was it not?

A. Yes, sir.

Q. By the Employees' Representative Committee?

A. Yes, sir.

Q. Was there any referendum among the employees as to that?

A. I don't know as to that.

Q. Did you poll your department and ask them if they wanted to go back to 40 hours?

A. About a year prior to that time I had polled my employees on the question of the 40 hour week.

Q. And what was their response?

A. The response, as I recollect it, was about equally divided.

Q. 50 per cent for and 50 per cent against? Is that right?

A. That is right.

Q. Was that referendum taken all over the yard?

A. I don't know.

Q. Do you know of any other departments that had that 1162 referendum?

A. No, sir.

Q. And in spite of the fact that one year before in your particular department which you represented the sentiment was evenly divided, you, as the representative, voted in favor of going back to 40 hours?

A. I did.

Q. Without consulting the men in your department?

A. I knew their viewpoint on it.

Q. Did you know their viewpoint then?

A. I thought I was able to interpret it.

Q. Had you had anything to change your mind in a year as to whether or not the sentiment was about 50-50 divided about it?

A. Yes.

Q. What happened?

A. Well, the conditions were different.

Q. What were the different conditions?

A. The men's opinions had changed on that.

Q. Upon what did you base that thought that the opinion had changed?

A. From the comments that had been made to me.

Q. By how many people?

A. I don't recall.

Q. Was it a majority of them?

1163 A. No; I don't think so.

Q. You don't think so?

A. No, sir.

Q. Were any of them those who had the previous year rejected the proposal?

A. I don't know.

Q. And on that kind of information you felt that the opinion had changed and voted for 40 hours? Is that right?

A. Yes.

1176 By Mr. BLUM:

Q. How did you take down the minutes of the meeting?

1177 A. How did I take the minutes down?

Q. Yes.

A. In longhand.

Q. Did you write them down in longhand as the meeting went on?

A. Items that I thought were important enough.

Q. Then you would take those minutes home and type them on a machine?

A. Yes.

Q. Whose machine?

A. My own.

Q. Did you hear Mr. Blanton testify that some young lady in the office, to his knowledge, was typing the minutes without remuneration?

A. I heard his testimony.

Q. Was he correct on that?

A. I don't know.

Q. Well, did you ever give the minutes to anybody else to be typed?

A. I never gave the minutes to any stenographer to be typed.

Q. Then when you prepared them at your home you brought them down to the plant the next day?

A. Yes.

Q. You went to the — what was that office? What was it  
1178 you called it?

A. The correspondence office.

Q. The correspondence office?

A. Yes.

Q. And then you told the man in charge you wanted to get a certain number of copies? Is that right?

A. Yes.

Q. And he would run them off for you?

A. Yes.

Q. What type of machine would he use?

A. I don't know.

Q. Was it company property?

A. I don't know.

Q. Was it run off there at the company office?

A. I don't know where they ran it off.

Q. Where did you get your copies after they were ready for you?

A. He sent them to me.

Q. He sent them to you, or did you pick them up at the same place?

A. He sent them to me.

Q. Over where you worked?

A. Yes, sir.

Q. And what did you do with them?

A. I had my distribution list roll. I usually take the noon 1179 hour after the meeting is over and used the yard mail system, addressing the envelopes and sending copies out to the different representatives.

Q. You said you used the yard mail system?

A. Yes.

Q. What is that system?

A. Well, it is envelopes in which there is space on them for numerous names in the departments, and you scratch out the preceding name on the list and write the names you want it to go to, and it is distributed to that party.

Q. Who prepared the mailing of it?

A. The mailing of it?

Q. Yes.

A. I did.

Q. On the yard mailing system?

A. Yes.

Q. Were they mailed out in the United States Mail, or were they delivered personally?

A. They were delivered by the person in the yard who delivered the yard mail.

Q. Did the envelopes have the name of the company in the upper left-hand corner?

A. I don't recall whether they did or not.

Q. Were they blank envelopes?

A. They had something on them about the yard mailing system.

1180 Q. How is that?

A. It has something on them about the yard mailing system.

Q. The yard mail system of the Newport News Shipbuilding & Dry Dock Company?

A. I don't know whether it has Newport News Shipbuilding & Dry Dock Company on it or not.

Q. How long have you been using those envelopes?

A. Well, I say I have been secretary going on to four years; and I have been using them all of that time.

Q. You have been using them once a month for four years?

A. At least once a month for four years.

Q. To your knowledge, have the envelopes been changed in any way?

A. Yes, I think they have been changed.

Q. In what respect?

A. Well, they used to have a tie-clasp on the back. I mean they used to have a leather clasp. No; I mean a string tie for tying.

the envelopes together, but now they have a metal clasp to fasten them.

Q. How long ago did they have the string?

A. I don't know.

Q. That is on the back of the envelope? Is that right?

A. Yes.

Q. And you remember that all right, that is, the fact that they had been changed?

1181 A. Yes.

Q. Can't you remember whether in the corner or on the front of the envelope they had the name of the Shipbuilding Company?

A. No; I can't remember. I will be glad to bring one of them up to you.

Q. Where did you get the envelopes?

A. I got them from the material department.

Q. Of the company?

A. In the wastepaper basket where they have these mail system envelopes to accumulate until they serve the purpose.

Q. When you say they were in the wastebasket, you don't mean they were thrown away?

A. No. They were to be used by anyone who came along and wanted an envelope.

Q. Anyone connected with the company?

A. Yes.

Q. And company property, is that right?

A. So far as I know; yes.

Q. The company supply room is where they were kept? Is that right?

A. As a matter of fact, I may have gotten some of the envelopes. That is where I got them, whenever I went in and asked the mail man for some envelopes.

1182 Q. Did you ever buy any?

A. Who, me?

Q. Yes.

A. No.

Q. Has the Employees' Representative Plan ever paid for any?

A. No.

Q. Has the Employees' Representative Plan ever paid for the service of the mailing room?

A. No.

Q. Has the Employees' Representative Plan ever paid for the mimeographing or multigraphing of the minutes?

A. No, sir.

Q. Has the Employees' Representative Plan ever paid for the paper used in multigraphing and mimeographing the minutes?

A. Not since I have been there.

Q. And that has been four years?

A. Yes, sir.

Q. And that has been down to the present time?

A. That is right.

Q. You did not vary your procedure any until the last month, did you?

A. In regard to the distribution of them?

Q. Yes.

1183 A. No.

Q. That is right, isn't it?

A. I told them how many copies I wanted and they sent them to me.

Q. You did not vary your manner of distribution of them, did you?

A. No, sir.

Q. Who keeps a record of the expenditures of the Employees' Representation Plan?

A. The expenditures?

Q. Yes.

A. Well, the Committee themselves authorize the expenditures.

Q. Do you have any minutes which show the authorizing of the expenditures for printing of the bylaws and anything like that in the minutes?

A. Yes.

Q. In what minutes do they appear?

A. They probably appear in the minutes of the first or second meeting following the election of the new representatives.

Q. Do you have those minutes here?

A. I think they are here; yes.

Q. Will you see if you can find those minutes authorizing the expenditure for the printing of the bylaws and other expenses incidental to the election?

1184 Mr. KEARNEY: I think they are in evidence in one of the exhibits. Will you see if they are not, Mr. Wilkins?

Here, Mr. Wilkins, you can come here and see. I wouldn't ever find them myself.

Trial Examiner PARADISE. I think nothing in the minutes that are in evidence. However, it may be that I have not made a thorough examination.

By Mr. BLUM:

Q. This is what I asked for [indicating], and this is a paper on the stationery of the Newport News Shipbuilding & Dry Dock Company, Newport News, Virginia, a memorandum from Mr. Blair Blanton, Chairman, Employees' Representation Committee.

"I wish to advise that the Employees' Representatives have the sum of \$123.31 on deposit with the Credit Union as of this date, July 13, 1937."

"The printing cost of the last election was \$44.40, which has been paid according to your instructions."

That is signed "J. Cargill Johnson," Treasurer of the Credit Union.



Was this \$44.40 deducted from the \$123.31?

A. No, sir; that was what was left. \$123.31 was what was left after the printing costs had been paid.

Q. You mean prior to the payment of the printing costs you had \$167.71 on deposit?

1185 A. Yes.

Q. What happened to that? After you received it, did you send it over to the Treasurer of the Credit Union?

A. I don't know. The printing cost was paid by the order of the Chairman.

1186 By Mr. BLUM:

Q. The memorandum which I just read into the record referred to printing costs. Were there any other expenses in connection with the election?

A. Not that I know of.

Q. How about the clerks and judges of the election? Were they paid?

A. Not that I know of.

Q. Did the clerks and judges serve all day long?

A. I think they did.

Q. Were they employees of the company?

A. They were.

Q. Do you know whether or not they lost their time?

A. I do not.

Q. Do you know whether they were paid for their time?

A. I do not.

Q. Do you know whether or not the company paid them anything at all for serving at the election?

A. I do not.

1188 By Mr. KEARNEY:

Q. Will you read into the record—

Trial Examiner PARADISE. May I interrupt for a minute? I do not want to interrupt your examination but I have one question I want to ask—

Mr. KEARNEY. All right.

Trial Examiner PARADISE. Before you start.

By Trial Examiner PARADISE:

1189 Q. Directing your attention to Article 6 of the Representation of Employees, which is Exhibit 1-K, the last paragraph, which, following the discussion of the meetings of the Employees' Representative Committee, time and place of meetings, who shall preside, the duties of the secretary, how the special meeting shall be called, and what a quorum shall consist of, the last paragraph provides as follows:

"This Committee may take action on such matters as are presented either by representatives, subcommittees, or the management's rep-

representative. The action of this Committee shall be final, and become effective upon agreement by the Company."

What does that clause, "The action of this Committee shall be final, and become effective upon agreement by the Company" mean?

A. Well, I take it that anything that we might care to do within reason would be finally agreed to by the management.

Q. That is a new clause, is it not? That is something that came into existence on June 30th of this year, is it not, as a result of the dissolution of the Joint Committee?

A. I don't know. I would have to examine it to see.

Q. So you do not know what that clause means, do you?

A. I have never had occasion to invoke it; no.

Trial Examiner PARADISE. All right.

1190

Redirect examination by Mr. KEARNEY:

Q. Mr. Wilkins, Mr. Blum asked you about the minutes of April 13th, with regard to the action taken by the management, with regard to matters concerning the employment of the men. Will you read the minutes of that meeting—what that action was?

A. (Reading.) "The Committee recommends that the General Joint Committee request the management to allow overtime for hours worked in excess of 40 hours in any one week. Overtime for other purposes to remain as at present, that is, time and one-half for any work in excess of 8 hours in any one day, and double time for Sundays and legal holidays now recognized by the Company, and that the week-end be changed to 7 a. m. on Monday instead of as at present, making Saturday the 'penalty' day for most of the overtime in any one week.

"We further recommend that on the last week on the present basis the yard remain open on Saturday in order that the hourly employees may be able to make a full week, and suggest that special arrangement be made by the management to take care of certain weekly men working seven days a week, such as watchmen, power house attendants, yard maintenance men, and so forth.

"We understand these men now earn a day a month vacation, whereby one day could be drawn from this vacation allowance to make them a full week. This week-end change would also make it possible for men losing time, due to bad weather, to make a full week by working Saturday.

"If the above recommendations are adopted the management to issue the necessary orders giving the date effective, and the details of operation."

"The Committee suggests that the management discourage working Saturdays and Sundays, as most workmen wish this time off.

"We believe that by more intensive planning and cooperation a great deal of the so-called emergency work can be avoided."

That was the end of the recommendation.

Q. Was that recommendation accepted?

A. I will have to modify that. There was one other paragraph in this recommendation.

Q. All right. Read that.

A. (Reading.) "It was called to the Committee's attention that in some instances an employee having worked eight hours is sent home and called back to work after only eight hours' rest period, which requires a man to work sixteen hours out of twenty-four. This question, however, does not come in line with the work designated for this Committee, but we mention it for the management's consideration."

Q. Now, the recommendations you made, were they accepted 1192 and acted upon by the management?

A. It was. The management accepted it.

Q. The management accepted it? Is that right?

A. Mr. Woodward suggested that in view of the certain repair contract which they had at that time, that the effective date be set as of May 31st, and the Committee adopted the recommendations, together with the suggestion made by Mr. Woodward.

Q. Effective May 31, 1937?

A. That is correct.

Trial Examiner PARADISE: What is that intended to prove, Mr. Kearney?

Mr. KEARNEY: It is just bringing out—Mr. Blum asked him in regard to whether there was anything in the minutes to show that this Committee had negotiated with the management in regard to hours.

1193 He said that there was, and we showed the minutes of March, and he asked him to point out in there the action taken, and then he showed him the minutes of April 13th, and I just thought the action taken ought to be read into the record.

By Mr. KEARNEY:

Q. Now, Mr. Wilkins, let me ask you this; is it unusual for a matter affecting a man's wages, hours, or the conditions under which he works, to be brought to the attention of the Employees' Committee, or is it brought there usually after it has not been able to be successfully adjusted in any manner?

A. I would say that there is always quite a bit of discussion among the interested parties prior to anything being adopted by the committee.

Q. Under the arrangement that you all are operating under in the shipyard at this time, if a man has a complaint about the amount of wages he receives, would you take that up immediately with the Employees' Representative Committee in order that they might press the matter, or does he take it there after he has either gone to his foreman, or up the line to the President, or after his representative has taken it up for him?

A. The usual procedure, I would say, would be for the employee to take it up with his representative if, for any reason, he did not wish to take it up as an individual; following which the represen-

1194 tative would take it up first with the immediate head of his department, and if he did not reach any satisfactory agreement there, he would probably go to the division superintendent, and if he did not reach it there, he might go to the management representative, or he might bring it before the committee, whichever in his judgment he believes would be the most satisfactory method of dealing with the situation.

Q. Mr. Wilkins, there has been some discussion of the yard mailing system. Let me ask you, is that system available and open for use by any employees of the yard?

A. It is.

Q. Are these envelopes that you speak about available to anybody—any employees in the yard?

A. They are.

Q. Under the yard mailing system when the mail comes in the Post Office, is it taken to a place and distributed there for the different departments and then carried out by messenger to the different departments—is that the system?

A. I don't know about—I don't know the procedure followed in outside mail to individuals within the plant. I don't know the exact procedure.

Q. What is the procedure with reference to any communication that you want sent out, within the plant?

A. I address the envelope, put my communication in it, and put it in some outgoing basket.

1195 Q. Is that system to be used simply for official business or might it be used for personal matters between different employees there?

A. It might also be used for personal matters.

Q. You say that it is used generally by anybody employed in the yard?

A. Yes, sir.

Q. And that these envelopes are available for anybody employed in the yard?

A. They are.

Q. Since June 30, 1937, do you, as secretary, advise the management's representative of any action taken by the Employees' Representative Committee?

A. I have.

Q. That would affect them?

A. I have.

Q. So that they would know the action which has been taken?

A. Yes, sir.

Mr. KEARNEY: I think that is all.

Recross examination by Mr. BLUM:

Q. You say that the employees' mailing system is in general use by all the employees of the company?

A. Well, it is, as far as it comes under my observation.

Q. Have you ever seen any other employees use it?

A. Yes, sir.

1196. Q. For what purpose?

A. Personal business as well as ship yard business.

Q. Have you seen any of them use it for personal purposes?

A. I have had reasons to suspect that it was for personal business.

Q. You suspected it but you did not know it?

A. No. I have used it for personal matters.

Q. When you use this 0202 charge is there any form that you fill out for that?

A. Charge?

Q. Yes.

A. Yes.

Q. Who gives you that form?

A. The form is given to me by the material department clerk.

Q. When you go in there and you tell him he gives you this form and you sign for it?

A. Since I have been secretary of the committee I do not think I have had to sign for any new envelopes. You understand, it is only the new ones that you have to sign for. There is a space on these envelopes for approximately 20 names, I should say. I do not think that during the time I have been secretary of the committee I have had to sign for over 100 envelopes.

Q. How many envelopes do you use on each occasion?

1197. A. Under the General Joint Committee I have used something over 100 a month.

Q. Over 100 a month?

A. Yes.

Q. You say you have signed for 100 in all four years you have been secretary of the organization?

A. I think that would be about correct.

Q. Why was it that sometimes you had to sign and sometimes you did not?

A. Because when you are using envelopes which have been previously addressed, there is no charge made for those envelopes. It is only where they put out the original in the material department that there is a charge made.

Q. So that those that have been previously addressed are used. Is that right?

A. Yes, sir.

Q. When you use used envelopes you do not have to sign for them. Is that right?

A. That is right.

Q. But when you get new envelopes you have to sign this form. Can you describe the form to us—what is on it?

A. No. I just told the man I wanted so many envelopes, and he takes the thing up, and I sign it.

Q. Is it a printed form?

A. I think it is.



1198 Q. Do you know what is printed on it?

A. No.

Q. Do you know whether it is a charge to so-and-so for so much?

A. No, I don't know.

Q. You do not recall whether that is on there or not?

A. I think he fills in the charge.

Q. Do you know where the charge goes?

A. No.

Q. Does the Employees' Representative Committee receive the fee?

A. The charge?

Q. Yes.

A. It has never been presented with any bill.

Q. We have here a draft of the new Employees' Representative Plan, which was adopted, with amendments, on May 20, 1937. Article 2, Section 2, is completely eliminated, and that deals with—you do not have that there, Mr. Examiner—or reads as follows:

“In addition to his duties as employees' representative, each employee representative shall be the safety inspector for the department or district from which he is elected, and for the performance of his duties as such inspector, shall be compensated in such amount or in such manner as may be agreed on by the Employees' Representative Committee and the company. Such compensation shall be in lieu of any other compensation or pay for loss of time while in the performance of any such duties.”

Can you tell us why that was taken out?

A. For one thing, I was not in favor of it, because I did not want to be safety inspector.

Q. You say you did not want to be safety inspector?

A. I did not want to be safety inspector.

Q. Well, is there any other reason why it was taken out?

A. None that I know of. I think that was the prime reason for leaving it out.

Q. Were any duties proposed for the safety inspector?

A. Ever since I have been on the committee, after some time during the year, the chairman would usually call to the attention of the elected representatives, or maybe the committee as a whole—I am not clear which—their duties, which were understood to report any unsatisfactory working conditions or unsafe working conditions that existed in the plant, and I presume that that was the reason why that clause was put in there.

Q. I see. It had nothing to do with the fact that your compensation was going to be stopped under the new plan, did it?

A. Not as far as I am concerned, it did not.

Q. You do not know why the words were added, “That it shall be in lieu of any other compensation for pay or loss of time while in the performance of such duties”?

1200 A. No. It had something to do with getting it out. I don't know why it was put in.

Mr. KEARNEY. It is understood that that is not in the plan.

Mr. BLUM. I said that it has been eliminated.

By Mr. BLUM:

Q. The draft from which I have been reading is clamped in your set of minutes of the General Joint Committee, and apparently it is mimeographed. Is that right?

A. I would say it was mimeographed.

Q. Were there other copies mimeographed?

A. I think there was.

Q. How many were mimeographed?

A. I don't know.

Q. Who mimeographed them?

A. I don't know.

Q. Who paid for the mimeographing?

A. I don't know.

Q. Who supplied the paper for mimeographing?

A. I don't know.

Q. Did the Employees' Representative Committee pay for any of those things which I have just mentioned?

A. Not that I know of.

Q. Did they ever receive a bill for any of the things I have just mentioned?

1201. A. No.

1215 By Mr. KEARNEY:

Q. I want to ask you something about the industrial conferences held each year down in Asheville, North Carolina. Have you ever attended those conferences?

A. I have, once.

Q. Did you attend it last year when Mr. Edward McGrady, the Assistant Secretary of Labor, was there, and made an address?

A. No, sir, I did not.

Q. I should say the former Assistant Secretary of Labor. You say that you went there only one time?

A. I think it was three years ago.

Q. Let me ask you this, are those delegates sent to the conference by the shipyard or by the Employees' Representative Committee?

A. They are sent there by the shipyard.

Q. Who pays their expenses down there?

A. When I went down there my expenses were paid by the company.

Q. What kind of a conference is that?

1216. A. It is a conference in which matters relating to the welfare of industrial workers in the South is discussed.

Q. At that conference of industrial workers was it a cross section between the people in a supervisory capacity and the workers?

A. The year I was there it was a cross section.

Q. You say these people are sent down there by the shipyard, and are shipyard workers, and are paid their expenses down there by the shipyard?

A. Mine was.

Q. Do you know who attended the conference there this past year?

A. At the request of the management, the representative elected four from their group to go—five, I believe, elected five to go; Claude Porter was one of them; C. A. Dews was one; and I do not recall the others, especially.

Q. That conference is just for the white people, is it?

A. It is.

Q. Do you know whether the shipyard sends colored delegates to a colored industrial conference?

A. They do.

Q. And they pay their expenses?

A. So far as I know; yes, sir.

Q. Where is that conference held?

A. At the Hampton Normal Institute.

Q. Now, Mr. Wilkins, you testified yesterday that you were  
1217 opposed to the section that was struck out of the draft of the Employees' Representative Plan, with regard to the payment of the representatives.

A. The safety inspector.

Q. Because you did not want to be a safety inspector. Was there any other reason advanced by any other representatives as to why that should not exist in there?

A. Not that I recall.

1219 By Mr. KEARNEY:

Q. When you were on the stand yesterday I asked you if you could relate some of the instances in which successful negotiations had been entered into between the Employees' Representative Committee and the management on propositions that have been favorably acted on, and you mentioned some of them. Since the hearing adjourned last night have you looked through your records and are you able to supply us with any other matters that were submitted and acted on favorably by the management?

A. I have gone over the minutes back into 1931, and listed certain of the things that, in my opinion, have a bearing on this case.

Q. Are you able to give us any other instances?

A. I think I can by referring to my notes that I made.

Q. You may do that, sir.

A. The meeting of July 13, 1937, adopted a recommendation relative to improving conditions for pay-offs during rainy  
1220 weather. At that same meeting there was reported from the trustees of the Benefit Loan Fund, the number of loans which had been made, and the amount of those loans, in connection with the fund established for them.

At that same meeting a proposed amendment to the bylaws was not made.

At the meeting of June 30, 1937, they organized a new committee and set the time and place of the meeting. Everything after that would be from the records of the General Joint Committee.

On June 8, 1937, that committee appointed a special committee to look into the question of pay-offs.

On 5-20-37 the revised plan was adopted.

On 5-17-37 a meeting of the elected representatives only was held, at which time they considered in detail the proposed new plan of representation, in which some modifications were made.

The General Joint Committee of 5-11 referred to the elected representatives the proposed plan for their recommendations, and adopted the report of the Hospitalization Committee.

On April 13, 1937, they adopted a report of the special meeting with regard to overtime in excess of 40 hours, and set May 31st as the time for the new schedule to go into effect.

1222 The WITNESS. On March 1st, at a called meeting we approved a plan to change the workweek in the yard as regards Naval contracts.

By Mr. KEARNEY:

Q. Was that when the people working on Naval contracts were permitted to work 40 hours instead of 36 hours?

A. Yes, sir.

Q. That is the matter in which Mr. Darling testified he could not get information from Mr. Garès about?

A. I suppose so.

On 11-10-36 the question of heat for the ship carpenters was referred to the member on the committee of the plant engineers, and at the meeting of January 1, 1937, it was reported that heat for the ship carpenters in that building had been provided.

Mr. BLUM. Isn't this all repetitious?

Trial Examiner PARADISE. Yes. So far there is nothing new.

Mr. BLUM. The question was, "Any other means."

The WITNESS. On October 13, 1936, a special committee of elected representatives was presented a plan by the benefit loan fund for the relief of distressed employees.

Trial Examiner PARADISE. Will you please tell us about things to which you have not testified?

The WITNESS. I do not recall that I testified to all of that.

Trial Examiner PARADISE. I think you have testified to all of the things that you have recited so far.

Mr. KEARNEY. In view of the length of time he was on the stand I can well understand that some of these things may have slipped his mind.

Trial Examiner PARADISE. I thought it was in his testimony before.

The WITNESS. In August, 1936, progress in the study of vacations with pay for all the employees was reported.

By Mr. KEARNEY:

Q Let me interrupt you to ask you whether there was presented to you or the representative of the district any question regarding the employees' vacations.

1224 A. This particular change did not apply to the people in my district.

Q. That particular change did not apply. Was there a question that arose in your district that you were able to satisfactorily settle in regard to vacations?

A. Not in connection with that, but there was one recently. Under our arrangement with the company the draftsmen are allowed ten days' vacation with pay per year, together with all legal and declared holidays. After the Fourth of July one of the members of my district came to me and said that the timekeeper had informed him that she had been instructed by the chief timekeeper not to permit the day's vacation allowance for July to be allowed unless that employee was working on the 1st of July.

Since it has been the custom to allow one day each month for the first ten months of the year for accumulation of this vacation allowance, and this person had made arrangements with his department head to take his vacation prior to that time, and did not have sufficient vacation allowance to carry it out until the 4th or 5th of July—I think the 4th of July was on Sunday and the 5th was on Monday, and that was declared a holiday by the yard, I took that matter up with the chief timekeeper, and related my position on it, and, subsequently, he changed his previous decision on it in a manner  
1225 that was acceptable to me and to the person who raised the complaint.

Q. Mr. Wilkins, if there are any other matters or changes since July 5, 1935, that you have record of there that you have not testified to, I will get you to state what they are.

A. The Committee was worried about some charges that were being made for glasses by the workmen in the plant, and, for the information of the Committee, Dr. Longacre appeared before the Committee and explained the cost involved in the glasses, and also spoke on the yard's equipment, and the ability to do X-ray service for the shipyard employees.

Q. Is that service rendered free of charge?

A. It is. The question arose in one of the districts wherein were reported differences, in pay between certain employees in that district, and that was reported upon.

I believe that is about all the incidents or matters that have transpired since July 5, 1935.

1227 Re-cross-examination by Mr. BLUM:

Q. What was the purpose of this industrial conference to which you were sent by the shipyard, and your expenses paid by them?



A. To consider matters of importance, which were considered of importance at that time.

Q. You discussed employer-employee relationships at that conference; did you?

A. Yes, sir.

Q. Was the question of unions raised at such conference?

A. Of what?

Q. Of unions?

A. No; I don't think so.

1228 Q. It was not discussed at all?

A. Some remarks on the part of some of the speakers may have had to do—would have been bound to have something to do—with the union activities, as well as employer activities.

Q. Were any of the discussions at these industrial conferences which you attended antiunion?

A. I don't recall any.

Q. Were any prounion?

A. Sir?

Q. Were any prounion?

A. I do not recall any.

Q. What was the nature of the union discussions at those industrial conferences?

A. Nothing that I recall other than items in which the employers and the unions were both interested.

Q. In what vein were they discussed?

A. In what?

Q. In what vein were they discussed? Were they favorable to the unions or not? Were they pro or con?

A. I would say that they were neither pro—for or against.

Q. Can you give an example of the kind of union discussion that went on?

A. I cannot; not now.

1229 Q. Was there any discussion of any other union, or independent plans, at those conferences?

A. I do not recall any.

Q. How long ago was this conference?

A. I think it was three years ago.

Q. Three years ago?

A. Yes, sir.

Mr. KEARNEY. They have them every year.

By Trial Examiner PARADISE:

Q. What is the official name of that organization—Southern Industrial—

A. Southern Conference on Human Relations in Industry.

By Mr. BLUM:

Q. Wasn't there a recent conference?

A. Yes, sir.

Q. Did you attend that recent conference?

A. I did not.

Q. Were you present at the meeting at which a report was given by those who did attend?

A. I was.

Q. Did you hear their report?

A. I did.

Q. Did their report have anything to do with the discussion of unions?

A. I don't recall.

Q. Do you recall at all what their report was?

1230 A. I recall their report was a synopsis of what the different speakers had said at the conference.

Q. Do you know who made the addresses at the various industrial conferences?

A. The various ones?

Q. Yes. For instance, who was the speaker, or the principal speaker, at the conference which you attended?

A. I do not recall. The first one that I appreciated most, I think from my own viewpoint, was that of a person by the name of Clark.

Q. What Clark was that? Was he from Charlotte, North Carolina—Dave Clark?

A. No. This Mr. Clark to whom I have reference, who conducted the discussion periods at the conference, I think is an independent—I don't recall what his title is. I could not testify to that.

Q. What did you start to say—independent what?

A. Well, personnel man.

Q. Independent, personnel man?

A. Yes.

Q. What do you mean by that—connected with any company?

A. No.

Q. Does he employ people for industries?

A. Employ people for industries?

Q. Yes.

A. I don't know. I don't think so.

1231 Q. Why do you call him an independent personnel man?

A. Because he seemed to be interested in the relationships that should exist between the employer and the employee.

Q. Do you know what Mr. Clark's first name was?

A. I do not, but I can find out for you.

Q. Do you know where he is from?

A. I think it was Cleveland, Ohio.

Q. Cleveland, Ohio?

A. I think so.

Q. And you were particularly impressed by his speeches. Is that right?

A. Yes, sir.

Q. What was there about his speeches that impressed you?

A. His manner.

Q. Just his manner?

A. What seemed to me to be his fairness in considering both sides, from what I considered a Christian viewpoint.

Q. Did he discuss unions at all, that you can remember?

A. As far as I can recall, he did not.

Q. Did he discuss any kind of union, either independent or with national affiliation?

A. Not with me.

Q. I mean, generally, on the floor.

A. Not that I recall.

Q. Do you know who paid for these speakers to come to these conferences?

A. I do not.

Q. How long did the conference last?

A. I think it lasted three days, or two and one-half days.

Q. Did it take the form of lectures?

A. Yes, sir.

Q. How long did the lectures last each day?

A. They had a morning session and an afternoon session.

Q. How many speakers, would you say?

A. Usually one.

Q. One in the morning and one in the afternoon?

A. Yes, sir.

Q. Was it the same man in the morning as in the afternoon, or were there two different people?

A. It would be different people.

Q. How about the second day? Would there be different people on that day or would it be the same people?

A. My recollections are that they were different.

Q. On the third day were they the same as the two previous days, or was it different people?

A. On the third day it is my recollection that it was a morning session.

Q. Just a morning session?

A. And that Mr. Clark summed up the points that had been presented by the various speakers at the conference.

1233 Q. Mr. Clark had spoken previously, or was that the first time he had spoken?

A. The only time he spoke was in conducting the discussion period at the conclusion of the persons' prepared talk.

Q. Do you remember any of the details of the report of the recent committee that came back and reported to the employees' Representative Plan?

A. I remember that they reported that the Assistant Secretary, who was then Assistant Secretary of Labor, was present at the conference.

Q. Do you mean Mr. McGrady, who resigned this morning, from the office of Assistant Secretary of Labor?

A. Yes, sir.

Q. He was present at the conference?

A. Yes, that is my recollection.

Q. Did you get a report of anybody else being present?

A. Yes, sir.

Q. Who were they?

A. I don't recall.

By Trial Examiner PARADISE:

Q. Is it in your minutes? Do you have a copy of the report of the Committee in your minutes?

A. I think there is.

By Mr. BLUM:

Q. Mr. Blanton went as one of the company's representatives, did he not?

1234 A. I have been told that Mr. Blanton was on the program at that conference.

Q. Mr. Blanton spoke on the program. Did you get that report?

A. Mr. Blanton told me that he discussed—he conducted the discussion permitted at the conclusion of Mr. McGrady's talk.

Q. Do you know what the nature of Mr. Blanton's discussion was?

A. I suppose from what he told me that it was in connection with the viewpoints which had been brought out, and Mr. McGrady's talk.

Q. Did he say anything to you about a discussion as to unions and union activities of employees?

1235 A. As I recall, he made some—talked over the proposition with me as to what happened at the conference, and he did make some mention of the different viewpoints which were brought up, which did not conform particularly to his own, but I might say, in justice to Mr. Blanton, that any conference of any kind on any subject would probably develop some points of difference, or similar points of difference.

Q. What I am getting at is, did the things which Mr. Blanton discussed with you as to points brought up with which he differed concern unions and union activities?

A. Not as regards any particular form of union or union activities.

Q. Were they with regard to unions at all?

A. No; only in so far as legislation which would be enacted relates to unions. No particular type of union was entered into.

By Trial Examiner PARADISE:

Q. Are you trying to tell us that the discussion was about labor legislation affecting unions? Is that what you are trying to say?

A. That is what the discussion was about, according to my recollection.

Q. It may have been about the National Labor Relations Act.

A. It may have been mentioned.

Q. (By Mr. BLUM.) And what labor legislation?

A. I don't know that the National Labor Relations Act was mentioned particularly.

Q. What labor legislation was mentioned?

A. Any labor legislation.

Q. State or Federal?

A. Most of it has been Federal.

Q. What Federal legislation have you discussed?

Mr. KEARNEY. I call the Examiner's attention to the fact that this witness was not there.

Mr. BLUM. He is reciting the conversation between himself and Mr. Blair Blanton.

The WITNESS. I do not recall any particular item of legislation was mentioned.

By Mr. BLUM:

Q. You do recall, however, the word "union," somehow or other got into the conversation. Is that right?

A. No; I don't recall that.

Q. How did you get into a discussion about unions?

A. We have not gotten into any discussion about unions.

Q. Didn't you just testify that in talking with Mr. Blair Blanton that question of unions came up?

A. Union activities.

Q. The question of union activities came up?

A. No particular type of union.

Q. What was the nature of the activities that came up?

A. As I said—

Q. Did you discuss strikes?

A. No.

Q. What was the nature of the activities you talked about?

A. Such items of general interest as all labor discussions were discussing at the present time.

Trial Examiner PARADISE. That does not mean anything. Give it to us more specifically.

The WITNESS. I do not recall any specific answer. I am speaking in general terms.

Trial Examiner PARADISE. You are speaking in very general terms; of course you are.

Mr. KEARNEY. If the Examiner please, I think the topic is a very general topic. The attorney for the Board has asked him to state what the report of this committee was.

Trial Examiner PARADISE. I think the testimony of the witness will speak pretty well for itself, Mr. Kearney.

Mr. KEARNEY. I think so, too, sir.



# MICRO CARD

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By Mr. BLUM:

Q. Do I understand that your answer to my question as to what the nature of the union activities that were discussed, is that you discussed the unions generally?

Mr. KEARNEY. I object to that. That has not been the answer.

Trial Examiner PARADISE. The objection is overruled.

Mr. KEARNEY. Note an exception.

By Mr. BLUM:

Q. Is that what you said?

A. As far as my conversation with Mr. Blanton was concerned in regard to the conference that occurred at Blue Ridge this past year, I do not recall any mention of the activities of any particular union, as such.

Q. Well, I asked you what activities you discussed.

A. The activities of labor organizations, in general, as brought out by Mr. McGrady.

Q. What sort of activities?

A. In regard to hours—

Q. Hours, wages, and conditions of employment?

A. Generally, yes.

Q. Those are the only activities you discussed?

A. The only activities?

Q. Yes.

A. Yes.

Q. Do you know whether the colored conferences were of a similar nature to those held by the whites?

A. My recollections are that the colored conferences had to do with similar matters.

Q. Did you ever get reports from the colored representatives?

A. Their reports have been presented and filed.

Q. When was the last colored conference?

A. I think it was in January.

Q. Of this year?

A. I think so.

1239 Q. How were the colored representatives chosen?

A. They selected their own representatives.

Q. Was the method of selecting the colored representatives the same method that was used in selecting the white representatives?

A. Not exactly.

Q. Is there anything in your minutes that shows how the colored representatives were chosen, or who they were when chosen?

A. No, sir.

Q. There are, however, minutes to show how the white men were chosen, are there not?

A. Yes, sir.

Q. They are already in evidence as Board's Exhibits. Are there any minutes that show the colored representatives' report to the Employees' Representative Plan?

A. There is in the records of the Committee—I don't know whether it is filed as part of the minutes or not—the report of those who attended the conference.

Q. Can you tell us why your minutes contain, in detail, the manner in which the white representatives were chosen and that at a subsequent meeting the minutes contain the report of the white representatives, and the same thing is not true of the colored representatives?

A. Because the colored representatives wanted to have a 1240 vote in the selection of the white representatives.

Mr. BLUM. I am sorry, but I did not get that. Will you read it back?

Trial Examiner PARADISE. He said because the colored representatives wanted to have a voice or a vote in the selection of the white representatives.

By Mr. BLUM:

Q. Was that done to preclude a vote by the colored representatives?

A. To preclude a vote?

Q. Yes.

A. No.

Q. Did the colored representatives vote for the white representatives?

A. They did.

Q. What is the meaning of your answer as to the reason why one group is incorporated in the minutes and the other is not?

A. Because the colored representatives selected their own delegates, or selected the men to be sent. We did not request of the colored representatives that we be permitted to vote in the selection of those.

Q. I see. Then, because the entire committee voted on the selection of the white representatives that was incorporated in the minutes. Is that correct?

A. That is correct.

1241 Q. Do you receive any pay for being the secretary of the Employees' Representative Committee?

A. I did under the old plan.

Q. Did you receive any additional pay in addition to what the others got?

A. Yes.

Q. How much did you get?

A. \$5 per month.

Q. Who paid that?

A. It was paid by the company.

Q. When was the last time you received that?

A. It was for the quarter ending June 30th.

Q. However, have you received any remuneration since for being secretary?

A. No.

Q. Are you to be paid any remuneration?

A. Not that I know of.

By Trial Examiner PARADISE:

Q. You were—is that paid quarterly? You were paid quarterly before?

A. Yes.

Q. And if you were to be paid the next quarter would be due when?

A. Probably—there is nothing in the plan now that would indicate any payment.

By Mr. BLUM:

1242 Q. In 1936 was the quarter at the end of June, also, for 1936?

A. Yes, sir.

Q. Was the next quarter at the end of September?

A. I think usually in that connection we take up the absentees, the question of excuse of absentees, at the following meeting. I think under the arrangement the question of absentees would be taken up at the October meeting of the committee; I would present a list of the names of the absentees, and whether or not they had presented any excuses, and the General Joint Committee would vote on whether or not they were to be excused.

Q. So that in 1936 the quarter after June 30th ended some time in October. Is that right?

A. It ended in September.

Q. It ended in September?

A. Yes, sir.

Q. At the end of the month?

A. Yes, sir.

Q. The various heads of the other activities of the Employees' Representative Plan, such as the Credit Union—

A. That has no part—

Mr. KEARNEY. There is nothing in the evidence that that has anything to do with the Employees' Representative Plan.

Mr. BLUM. I will withdraw the question.

1243 By Mr. BLUM:

Q. Are there any other activities engaged in by the Employees' Representative Plan, of which the Employees' Representative Plan is the head?

A. I would say that the Trustees Benefit Loan Fund, to which we elected trustees, and which report to us, would be the only one at the present time.

Q. So the trustees are elected by the Employees' Representative Plan?

A. By the committee.

Q. By the committee. How many trustees are there?

A. Four.

Q. Are they employees of the company or are they officials?

A. Employees.

Q. Are any of them in a supervisory capacity?

A. No.

Q. Are they all connected with the Employees' Representative Committee?

A. I believe that they are at the present time. At the time of their election they were not.

Q. At the time of their election to what?

A. As trustees.

Q. They were not representatives of the Employees' Representative Plan? Is that right?

A. Yes, at least some of them.

1244 Q. Then they were subsequently elected in the last election. Is that right?

A. By the committee; yes, sir.

Q. Elected by the committee?

A. Yes, by the representative committee.

Q. Elected by the representative committee as representatives to the Plan?

A. No; as trustees of the Ship Yard Benefit Loan Fund.

Q. My question was, were they elected representatives to the Plan?

A. I think that one of them who was elected as trustee by the committee, in the following election of employees' representatives was elected by his district to represent that district.

Q. How about the other three?

A. I think they were members of the committee at the time of their election by the committee.

Q. Were they defeated for re-election, or were they ineligible for re-election, or did not they run?

A. I think they were re-elected.

Q. They were re-elected?

A. They were re-elected to the Employees' Representative Plan.

Q. Do I understand that all four trustees are also now representatives to the Plan or to the committee?

A. I think they are.

1245 Q. Do these trustees receive any remuneration for their work?

A. They do not.

1255 Redirect examination by Mr. KEARNEY:

Q. I have here the reports of the Blue Ridge—of the Southern Conference of Human Relations in Industry, and ask you if you will look in there and see if the speech of the Assistant Secretary of Labor is contained in there, on page 39.

A. That is the title of the article—"Labor's Responsibility for Industrial Relations"—by Edward F. McGrady.

Q. Then I hand you one showing the conference of 1934, and ask you if you find there the speech of Honorable George Berry, at that

time Divisional Administrator of the N. R. A., and President, International Pressmen's Union; and ask you if that speech is contained in there.

A. It is.

Mr. KEARNEY. In order that they will not think we are trying to suppress any of the intermediate copies, we will offer into evidence the official report of the conference for 1935 and 1936, together with the two books that I have just exhibited.

1256 Trial Examiner PARADISE. What particular portion do you care to read?

Mr. BLUM. The whole record will speak for itself. It is too voluminous to pick out any particular ones.

Trial Examiner PARADISE. All four issues are offered. Let them be separately marked. The one for the year 1937 will be marked "Intervener's Exhibit No. 6." The one for the year 1936 will be "Intervener's Exhibit No. 7." The one for the year 1935 will be "Intervener's Exhibit No. 8." The one for 1934 will be "Intervener's Exhibit No. 9."

1257

1258 SOLOMON TRAVIS (colored), a witness called by and on behalf of the Intervener, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. KEARNEY:

Q. Will you state your name and residence?

A. Solomon Travis, 1146 Thirty-fourth Street.

By Trial Examiner PARADISE:

Q. What is the first name?

A. Solomon.

By Mr. KEARNEY:

Q. Where are you employed?

A. At the Newport News Shipbuilding & Dry Dock Company.

Q. In what department?

A. In the machine shop.

Q. How long have you been employed there?

A. I was in the shipyard in March, 1915. I worked there until 1918. Then I went back in 1920 and worked there until

1259 the Navy Department canceled all contracts in 1921, due to the Disarmament Conference. I was laid off then. I went to New York and stayed there until 1926, March 6th, and then I was reemployed in the machine shop, and I have been there since March 6, 1926.

Q. You are a member of the Employees' Representative Plan in the shipyard, are you?

A. Going on my fifth year.

Q. You are a representative, going on your fifth year. Is that what you mean?

A. Yes, sir.



Q. You have participated in the Plan since it has been in existence, have you?

A. Since 1927.

Q. Since 1927?

A. Yes.

Q. You represent your district, and have done so for the past five years, on the Employees' Representative Committee?

A. Yes, sir.

Q. Have you found during the time you have been on the Committee that the management of the shipyard was willing to negotiate with the other members of the Committee in regard to matters pertaining to wages, hours, and conditions of work?

A. Yes, I have been very fortunate in dealing with them, on the part of my men.

1260 Q. Has it usually been necessary for you to take up matters pertaining to hours, wages, and conditions under which the men work, with the Employees' Representative Committee?

A. Most of the time when differences arise I have been able to adjust them right in my department.

Q. What have you been able to accomplish as representative there in your department?

A. The first year I was representative, in 1933, and at that time I spoke to Mr. Sterling concerning the low rate in our department as affecting some men. There were a goodly number of them that I did not think were getting what they should have gotten. I talked with Mr. Sterling and Mr. Sterling, I think some four or five days later, came to me and told me that he had looked over the list, and that he felt the same way that I did, and he gave the whole department a 4-cent boost. That was the first item.

Since that time I have been instrumental in getting a 6-cents-an-hour increase for, I would say, about fifty of my men, in groups of sometimes two or three, and sometimes six or seven or eight at a time.

There are only two occasions when I have been turned down when I went to them for an advance for my men and, in both cases, the men themselves were partly responsible, and I told them that if they pulled up I would go back again.

Q. Were you in any way instrumental in having the vacation plan put into effect there, pertaining to the hourly men?

1261 A. That vacation pay came from the tool-makers' department, and Mr. Jones, who had worked with the shipyard for over 20 years, talked with Mr. Brockley, then his representative, and after one or two meetings, and Mr. Brockley did not introduce it. Mr. Jones sent a fellow out for me that I called in to see him, and he talked with me about it and he said, "I think that a man that has worked here for 20 years or more should be at least given some time to enjoy himself before he dies." I said, "I think the same." And the original plan was that all employees working for the shipyard 20 years or more would be given two weeks with pay. That was the

original plan in his mind. I talked with Mr. Brockley and I talked with Mr. Blanton.

Q. Both of those men are on the Employees' Representative Committee?

A. Mr. Brockley is representative for the Engineers and Mr. Blanton was at that time, and still is, the Chairman. Mr. Blanton told me that he had some other matters that he would like to take up right then; and he did not want to crowd himself too much at one time, but he would bring it up; and it eventually came up, and it was referred to a committee to work with the management, to work out the plan; and it was finally brought back to us, as you will see, in 1936, and we were granted, not an employee that 1262 had worked 20 years, but an employee that had worked five years with the company was eligible for that vacation.

Q. All right. Do you have any men in your district that operates power saws?

A. Yes, sir; about four or five that operate power saws.

Q. Did you get them increases in wages or better their conditions of work?

A. Yes, sir. The power saws, at the time I started running the power saw, it was just a job. Sometimes a man wanted ten or fifteen or one hundred pieces sawed off, and they would put somebody on there, and they would saw them up. That was in the course of a day. Well, I took a different view of it. I felt like if a man was called down—they might want it in boats—sawed off—and they wanted them as quick as they could get them. I took it, however, that they ought to give them some encouragement to hustle, and, in view of that, why, it would be piece work on the saw; and the tickets come through the office now, just like any other job.

Q. When you went on the committee were there any conditions with regard to the warmth of the building in which the men worked, or which they used to eat their lunch, and to congregate in during luncheon hour?

A. In the locker rooms on the southern side of the machine shop, it is a corrugated iron structure, and they had a heating apparatus in there, but it was overhead, and the colored 1263 portion was up above, and the white portion was down at the lower end, and it became extremely cold in there, and I went to Mr. Brockley and said, "Look here; it is kind of cold in this washroom." He said, "It certainly is." We have heat in there but it is all up overhead. I said, "Let's see what we can do about it." He said, "All right. I will go up with you." So Mr. Brockley and I went up to see Mr. Sterling, our superintendent, and Mr. Sterling told us to sit down and tell him what our troubles were. We told him, and he went up; and Mr. Fitzhugh, who I think is plant engineer, Mr. Fitzhugh told him that he would send a man right over, and he did send a man over that day to take the temperature in the locker rooms, and that was along around the middle of the week. Well, anyway, by the next Monday we had that adjusted,

and they had taken out the overhead radiators and put radiators all along the sides and under the washbasins, and it gave us sufficient heat.

Q. Was that the department for the white employees?

A. The white and colored.

Q. Both?

A. Both.

Q. Now, since June 30th, when this new plan or contract has been in effect, have you been able to secure any changes in pays where the men worked?

1264 A. Quite a few rainstorms, one or two heavy ones, came along on pay day, along in June, and one of them there, practically everybody got soaked, and several fellows spoke to me—some of them talked to me and with me, and talked to Mr. Brockley, and Mr. J. J. Smith. The three districts are closely connected, being the joiners' shop and the machine shop; and we talked it over, and decided to take it up with the committee.

At the next meeting of the committee, I think you will see in the minutes, Mr. Brockley made the motion, I think, that a committee be appointed to look into it and see if we could not change it so that the men could at least be spared exposure to the extreme weather, and Mr. Smith, Mr. Brockley, and Mr. Cole and myself, I think, were appointed on the Committee to confer with the management relative to this change.

Q. Were you able to effect the changes?

A. Yes, sir.

Q. Were they settled to your satisfaction?

A. They settled it to our satisfaction. We had our side and they had their side.

We agreed that the best thing to do under the circumstances then was that in the case of an impending storm, they would start paying off at the 4 o'clock whistle instead of 4:15, as formerly, and  
1265 they would keep the paymasters at their places until five o'clock, so that any man that did not want to come out into the weather could wait until at least five o'clock to get his money, or if he wanted to take the hazard ahead of a storm, he could get it as soon as he was through at 4 o'clock.

Q. You confined your activities, as representative, to things during working hours, or did you put in any time during working hours?

A. Oh, my man, sometimes I am out on the street until 9 o'clock looking out for some of my fellows.

Q. Nine o'clock in the day or night?

A. Sir?

Q. Nine o'clock in the day or night?

A. Night. I had one case—

• Trial Examiner PARADISE. Never mind about that. Go ahead, Mr. Kearney.

The WITNESS. I had one case of a fellow—

Mr. KEARNEY. That is all right.

Trial Examiner PARADISE. I am not at all interested in that. I assume this witness discharged his duties as an employees' representative conscientiously, sincerely, and industriously.

Mr. KEARNEY. That covers it pretty well.

Trial Examiner PARADISE. The details of how he discharges his duties as a representative, and the hours he spends at night on it, and how much time he spent, I think are extraneous to the record.

Mr. KEARNEY. All right.

By Mr. KEARNEY:

Q. You were elected representative in the election held in June of 1937, were you?

A. Yes, sir.

Q. Were you elected by a majority of the workmen in your district?

A. I don't know whether you would call it a majority or not. I have 108 in the district and I got 94 votes.

By trial Examiner PARADISE:

Q. How many?

A. Ninety-four out of the 108.

Trial Examiner PARADISE. That is almost a majority.

The Witness. I think so.

By Mr. KEARNEY:

Q. Do you know of any instance in which the shipyard encouraged or discouraged the election of any particular man—

Mr. BLUM. That is objected to.

By Mr. KEARNEY:

Q. For representative?

A. Never since I have been in the yard.

Mr. KEARNEY. Just a minute. There is an objection.

Trial Examiner PARADISE. What is the objection?

Mr. KEARNEY. Do you know of any instance in which the shipyard discouraged or encouraged, and by "shipyard" I meant any man in a supervisory capacity, the election of any man as a representative of the employees?

Trial Examiner PARADISE. I do not think there is any testimony in the case that they did, except possibly in the case of Mr. Blanton.

Mr. KEARNEY. I understood that, but am I confined in rebuttal to just what they have here, or can not I go ahead with positive proof?

Trial Examiner PARADISE. There is no basis for any finding by the Board that they did. I do not see that it would add anything for you to prove that they did. The objection is sustained.

1271 By Mr. KEARNEY:

Q. My question to you, Solomon, was whether you know whether the majority of the employees in your district favor a continuation of the Employees' Representative Plan.

A. I feel certain that they do.

Mr. BLUM. I move that the answer be stricken as not responsive to the question.

Trial Examiner PARADISE. Sustained.

By Mr. KEARNEY:

Q. Are you able to say definitely whether or not they are in favor of the continuation of the plan?

A. Yes, sir.

Q. Well, are they?

A. Yes, sir; they are.

Q. You were one of the committee to select counsel for this case, I believe.

A. Yes, sir.

Q. There has been some intimation here that on the organization meeting on June 30, 1937, that the representatives, or the colored representatives, were called outside during the meeting or just prior to the meeting by somebody who has not been identified. Is that a fact?

1272 A. If it was I would not be here on this witness stand today.

I couldn't countenance trying to represent my men and just being forced to go out while something else was being voted on. I wouldn't do it.

Q. Was there any influence brought to bear on you by anybody in a supervisory position in the shipyard as to whom you should vote for as Chairman or Secretary of the Employees' Representation Committee?

A. Not in the least. I think Mr. White and myself were mostly responsible for the way the colored representatives went, because we thought Mr. Blanton was the one who knew more about the Plan. He had worked with it for eight or nine years and he knew more about it, and they were changing from a joint plan to a single plan, and we didn't think it was good to swap horses while crossing the river.

Mr. KEARNEY. That is all.

Cross examination by Mr. BLUM:

Q. You say the last time you started working for the company was in 1928?

A. It was in 1926; March 6th.

Q. What was your job at that time?

A. Sir?

Q. What was your job at that time?

A. What was my job at that time?

Q. Yes.

1273 A. Machinists' helper.

Q. Did you subsequently get any changes in jobs?

A. When the machinist with whom I worked, by the name of Golding, was transferred as supervisor he asked me if I cared to follow the plane on the south side of the machine shop. He and I



had worked together, and we had gotten along well. He wanted me to go over there with him. I said, "It is all right if Mr. Sherman says so." And I went over there with him when he went over there.

Q. When was that?

A. I guess that was somewhere around 1930 or 1931.

Q. 1931?

A. I said 1930 or 1931.

Q. Did the job change again at any time?

A. Sir?

Q. Did the job change again at any time?

A. It did not up until now. That power saw is still on that side.

Q. Did you operate the power saw in addition to the crane operating?

A. No, sir. When I operate the power saw another man is on the crane.

Q. Do you do both jobs?

A. Sometimes I am put on the power saw. You see, there are some three or four helpers and others on that side. If I happen to be busy doing something else and someone comes in and wants maybe two or three liners sawed, then they can designate some of the other fellows to go over and saw it. But if a job comes in there—and they do sometimes—that is rather important, for the simple reason I work the saw more than anyone else, the boss will put me on the saw.

Q. You say you work the saw more than anybody else?

A. I run the saw more than anybody else on that side.

Q. Why is that?

A. On the south side of the machine shop.

Q. I asked why is that.

A. Why is it, you say?

Q. Yes; why is it?

A. I have been able to work on that saw long enough that I invented and put a table on there, and instead of sawing straight material I can saw round material. I think I know more about it than most of them. And that is why I am put on there.

Q. Does the operation of the saw together with the operation of the crane give you the opportunity of making more money?

A. I don't operate the crane when I am operating the saw.

Q. You do both? You do both from time to time?

A. When I am not on the saw I am back on the crane, as a filer. When I am on the saw I am not on the crane as a filer.

Q. Is there any week that goes by when you operate on the saw exclusively or when you operate on the crane exclusively?

A. Oh, yes; there are some weeks. There were a lot of them when we were sawing runners for airplane carriers.

Q. And you were on the saw exclusively and not on the crane?

A. When we were sawing liners for the airplane carriers there were some days orders for as high as three or four hundred liners that would come in at a time. You are not sawing them short either.

Some were 8 by 3, 8 by 1½, and the like. Then, before you finished them there were some others. And sometimes I remember I would not get off the saw maybe for two months.

Q. And you would work on the saw generally for two months and you would not do any work on the crane?

A. When I was working on the saw two months I was working on the saw.

Q. Your opportunities for earning money are greater when you are on the saw?

A. Sir?

Q. Are your opportunities for earning money greater when you are working on the saw?

A. I would say so. You are given piece-work on the saw and day work otherwise.

Q. And you requested the piece-work on behalf of the men 1276. who work on the saw, did you?

A. Sir?

Q. You requested that piece-work on behalf of the men who work on the saw?

A. Of course, I did.

Q. Can you tell me, without giving any figures, how your salary compares with the salary of the other men in your department?

A. You say what?

Q. Can you tell me, without giving any figures, how your salary compares with the salary of the other men in your department?

A. Two of us get the same thing. The other two are practically new men. We have been there for quite some time.

Q. How many men do you represent?

A. I am talking about the men on the saw. We don't have a saw for every man I represent.

Q. There are only four men to do the sawing?

A. There are only four men on those saws.

Q. Does the other man who works on the saw do other work sometimes when he is not working on the saw?

A. Sometimes he do.

Q. He is a crane filer?

A. When he is on the saw he is on the saw; when he is off the saw he is off the saw. He kind of stays on the saw.

1277. Q. When he is off the saw what does he do?

A. He is a crane filer in the north wing of the shop, like I am in the south wing of the shop.

Q. You said to Mr. Kearney that you were able to say that the men in your department whom you represent want the Employees' Representation Plan to continue?

A. Yes, sir.

Q. How are you able to say that?

A. How was I able to say it?

Q. Yes.

A. Well, just before each election, and right after each election we put on kind of a little pow-wow or kind of a little pow-wows. The reason I judge that the majority was there, we had something like three or four boxes of cigars that were distributed at dinner time while they were eating.

Q. Who gave you the cigars?

A. Sir?

Q. Where did you get the cigars?

A. The men in the district buy them.

Q. What men in the district?

A. Some fellows that work in the district there.

Q. Were they any of the supervisory employees?

A. Oh, no. The people make money. They can buy cigars when they want them. The supervisors do not have to buy them.

1278 They are not all poor. Some of them have a little something.

Q. And they bought three boxes?

A. Yes, sir; they bought three boxes.

Q. Go ahead.

A. Down at the Peoples Drug Store, down at 28th Street and Washington Avenue. And the boy that passed around the cigars distributed them. I was not there when they started to pass them. I came in and asked in and asked if they had already been served around, and he said yes. And they had consumed—it was about fifty. They had consumed one whole box and about a layer off the top of the next box. They might have gone into the second layer of the second box. I think it is something like a dozen cigars on a layer, or something close to that. I could judge from that. The washroom was pretty well filled up, and I should judge from that that there were more than 60 men there. And I talked with them.

Trial Examiner PARADISE. Did any of them double up on the cigars?

The WITNESS. I am sure they did not. I had a man that weighed about 240 pounds distribute them. Doubling up on him might have been a little cautious.

By Mr. BLUM:

Q. Go ahead. You were talking to them?

A. Yes; I was talking to them. I was telling them some of the things that I had been able to accomplish for them under the plan we had and I asked them if they were satisfied. It was all in one voice. I did not get no dissenting voice. So I guessed it was the 60 that said okay.

Q. What were they satisfied with? Was it your representation?

A. Yes; they were satisfied with my representation. It had to be in connection with the representative plan. That was the only thing I represented them on.

Q. Did you ask them the specific question whether they were satisfied with the plan?

A. They must have been. They voted for me.

Q. Your answer was that you were able to say and that you know positively that the majority of the men whom you represent are in favor of the plan?

A. Yes, sir.

Q. Now you say that your positive assertions are based upon the fact that they voted for you?

A. Yes, sir.

Q. That is the only basis of your positive assertions?

A. No. I said this: I told them of the things. I didn't have to tell them, in fact, because quite a few of them there knew I had gone to the boss and gotten them raises and conditions changed and things like that. They knew. But I told them I had gotten quite a few concessions for them under the plan that we were operating under.

1286 Q. Do you understand? Because there was quite a lot of confusion about unions in the past year or two; and I said, "Now, do you want to continue this plan? Do you want to continue me as representative? If you do, then you vote. If you don't, just kick me out."

And they put me in. And I judge they were all satisfied.

Q. You say that there had been some confusion in the past year or so?

A. Yes, all over the country. You have been reading it as well as I have.

Q. We are referring to the shipyard now.

A. No; we don't have any trouble there.

Q. Was there any confusion there in a year or so about unions?

A. The only confusion I saw in the year or two was Mr. Darling and his companions passing around papers about the gate.

Q. So that there wasn't any confusion in your department about the unions at all, was there?

A. Says which?

Q. There wasn't any confusion in your department about unions at all, was there?

A. If it comes into the shipyard it will be bound to affect my department, Mr. Blunt.

281 Q. And you were trying to prevent your department from getting into confusion about unions?

A. I wasn't trying to prevent them from doing anything. I laid the case before them. I said, "If you are satisfied and if you are satisfied with me, vote for me. If you are not, kick me out." Now, that laid it open, didn't it?

Q. When did you say this meeting was held?

A. What meeting?

Q. About the men in your department, at which time these cigars were distributed.

A. Prior to the election.

Q. When?

A. Prior to the election.

Q. And you said you were putting on a little power?

A. I said pow-wow.

Q. Pow-wows?

A. P-o-w p-o-w; that is right.

Trial Examiner PARADISE. You are wrong. It is p-o-w w-o-w.

The WITNESS. That is right—p-o-w w-o-w.

By Mr. BLUM:

Q. You said that Mr. White, who testified yesterday, and yourself were responsible, you believed for the manner in which the other men voted; that is, how the other colored delegates voted?

A. For what?

1282 Q. For Mr. Blanton, as chairman.

A. Yes, I think so. You can let the shipyard officials go and blame it on Mr. White and I.

Q. What happened?

A. What happened?

Q. Yes.

A. Maybe we could go back to the last campaign and find out about what happened about some of the representatives in Congress and how they were elected.

Q. We are not interested in Congress.

A. I have a right—you have a right and I have a right, if I have a friend that I think deserves the office, I have the right to tell him and to talk about him to anybody. Do I? Is that right?

Trial Examiner PARADISE. That is right.

The WITNESS. If that is right—I just want to get it straight, Mr. Examiner. If I have a right to do that, and in this case I felt that Mr. Blanton had served faithfully and well for eight or nine years as Chairman; and he knew the plan from beginning to end. I did not want to change. Of course, since then I have come to know Mr. Keith, but I didn't feel then that a new man, regardless of how well I knew him, could step in there at that time, changing from a joint plan to a single plan, and get the same results as the man who knew the other plan and helped to draw up the

1283 single plan under which we were working. And for that reason, and for that reason alone, I happened to have four or five of the representatives that belong to the church to which I belong, and I could talk to them very often, and I did talk to them very often about Mr. Blanton; and I think I can truthfully say I helped turn at least six or eight votes for the colored representatives to Mr.

Blanton, excluding my own.

1284 Q. And Mr. Blanton was therefore elected by a majority of three votes? Is that right?

A. Mr. Blanton, I think, was elected by a majority of five votes. It was 23 to 18, I think.

Q. What was Mr. White's activity in connection with influencing the votes on the Plan?

A. The same as mine.



Q. It was the same as yours?

A. Yes, sir. He and I worked together.

Q. The night of the election did you and Mr. White detain the colored representatives before they went into the meeting?

A. Did we do what?

Q. Did you detain them for a moment or so?

A. The colored representatives came into that meeting just as they have to all of the rest of them during the four years that I have been there. They sometimes wait, some of them. Some of them go right in. We have one that does not come until around half past four no days. So he did not get there until half past four that day. They did not come in in any group, regardless of who says they did.

When I got in there Mr. White and myself and one other representative that had been standing outside talking came in together, just the same as you and the Examiner did yesterday morning, and when we got in there there were ten colored representatives already in there and seated.

Q. Did you count them?

A. They had already been seated previously, I will tell you. We had one representative in the hospital and the three that came in, Mr. White and I—and I forget who the other fellow was—and myself. I was the last one to come through the door. And Mr. Williams, he later came in. They did not come in in any groups, and they were not asked to go out.

Q. Did you attend the conference; that is, the Industrial Conference of Colored Workers?

A. No, sir; I did not.

Q. Do you know who did on behalf of the colored men?

A. Do I know who did?

Q. On behalf of the colored people?

A. I think it was Lawrence Brown and Moses Drew, I think it was.

Q. Lawrence Brown and who else?

A. I think there were only the two.

Q. Lawrence Brown and who else? I did not get the other name.

A. Moses Drew.

Q. Were they representatives of the Plan?

A. They were then. One of them has been defeated. One of them was defeated this year.

Mr. BLUM. That is all.

Mr. KEARNEY. That is all.

1286 Trial Examiner PARADISE. You may step down.  
(Witness excused.)

CHARLES BOYD, a witness called for and on behalf of the Inter-  
gener, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. KEARNEY:

Q. Your name is Charles Boyd?

A. Yes, sir.

Q. And where do you live?

A. 1221 31st Street.

Q. In Newport News?

A. Yes, sir.

Q. Where are you employed?

A. Where was I born?

Q. No; where do you work?

A. At the ship yard.

Q. In what department do you work there?

A. The rivet department.

Q. How long have you been employed in the ship yard?

A. About 23 years.

Q. What is your job in the ship yard?

A. My job now is chipping and caulking.

Q. You do not have any supervisory authority?

A. No, sir; I do not.

Q. You just work with your tools, do you?

1287 A. Yes, sir; with my tools.

Q. Are you a member of the Employees' Representative Plan?

A. Yes, sir.

Q. Are you on the Employees' Representative Committee?

A. Yes, sir.

Q. Representing your district there in the yard?

A. Yes, sir; district 33.

Q. How long have you been on the committee?

A. I have been on the committee for the number of years, with the exception of one, that the system that has been in operation.

Q. So you have been a committee man every year since the system has been in operation with the exception of one year?

A. Yes, sir; with the exception of one year.

Q. Has there been any effort on the part of anybody in a supervisory capacity connected with the ship yard in the selection of representatives to the Committee?

A. Not any as I can recall.

Q. Do you know whether the majority of men in your district desire the continuation of the Employees' Representation Plan or not?

A. Several expressed themselves. I couldn't say according to number, but in my opinion the majority, they seem to be satisfied so far. There are some exceptions. You might find a few.

1288 one or two occasionally, who might disagree with quite a few things.

Q. How many men are there in your district?

A. I don't know just now. We have had continual lay-offs and lay-offs and furloughs, and so on, and it has cut them down considerably. I judge I have around now maybe 140 or 150; or something like that. I may be wrong as to the exact number.

Q. You, and the witness Solomon Travis and R. G. White, are three of the 15 elected representatives? Is that right?

A. Yes; that is right.

Q. Were you present at the meeting on June 30th?

A. No, sir. I was sick. I was the one that was in the hospital at that time.

Q. During the time that the plan has been in operation and during the time you have been the representative of your district on the committee have you found the management of the shipyard was willing to negotiate with you in regard to matters to the men in your district and the hours—

Mr. BLUM. That is objected to.

By Mr. KEARNEY:

Q. And the conditions of work?

A. Yes, sir; I have.

Mr. BLUM. I move the answer be stricken out.

Trial Examiner PARADISE. Upon what ground, Mr. Blum?

Mr. BLUM. I think, in the first place, the testimony is cumulative; secondly, it bears on no issue in this case whatsoever.

It doesn't make any difference how receptive the management has been to the representatives and the Employees' Representative Plan, if the facts substantiate the allegation that the Plan is employer-dominated or financial support is contributed to it by the lawyer, or if the men are intimidated in any way by the employers in going about their duties, it is illegal. And it is the legality or the illegality of the plan that we are confronted with in this hearing.

Mr. KEARNEY. That is the issue in the case. Of course, we have the right to introduce evidence to show whether it is or is not company-dominated. That is the purpose for which I am submitting these facts.

Trial Examiner PARADISE. Is that what this question is intended to prove?

Mr. KEARNEY. It is evidence to show that the company recognizes its obligation, first, under that contract or plan, and that in pursuance of that it does deal fairly with these men, occupying the position that this witness does.

Trial Examiner PARADISE. Let's get a couple of things straight here, Mr. Kearney.

Mr. KEARNEY. All right.

Trial Examiner PARADISE. I take it there is no question, and I mean you will concede, and all parties will concede that the Plan, as it existed before June 30, 1937, was a company-dominated union within the meaning of the National Labor Relations Act.

Mr. SKINNER. The respondent does not concede that, Mr. Examiner.

Trial Examiner PARADISE. In spite of the existence of the Joint Committee on which the management had an equal number of representatives with the workers?

Mr. SKINNER. No, sir. We do not concede anything of the kind. As a matter of fact, we deny it, and we denied it in the answer.

Mr. KEARNEY. That brings it down to whether this is a contract or not. It is our position that it is.

Trial Examiner PARADISE. It is a labor organization, is it not?

Mr. KEARNEY. It is a labor organization under the terms, or the Employees' Representative Committee is a labor organization simply by reason of the National Labor Relations Act. We deny that. It does come within the definition—

Trial Examiner PARADISE. You mean as a matter of law it is a labor organization?

Mr. KEARNEY. It comes within the definition of what a labor organization is under that Act. For the purpose of that Act I think it is a labor organization. I will get that far with you.

1291 Trial Examiner PARADISE. Let's not quibble about it. It is a labor organization?

Mr. KEARNEY. For the purposes of this Act it is a labor organization.

Trial Examiner PARADISE. Are there some purposes for which it is not a labor organization?

Mr. KEARNEY. Yes; I think so. I think there are purposes for which it is not a labor organization.

Trial Examiner PARADISE. In what respects is it not a labor organization, Mr. Kearney, ignoring the Act?

Mr. KEARNEY. According to the Act?

Trial Examiner PARADISE. I say, ignoring the Act, Mr. Kearney, in what respect is it not a labor organization?

Mr. KEARNEY. Take the men individually; in fact, the only way I say that they make this a labor organization is when the 43 committeemen might meet together. Take them separately and say instead of meeting together—

Trial Examiner PARADISE. That is what the Plan contemplates, isn't it, that they meet together?

Mr. KEARNEY. The Plan says they might do that. But you can read the Plan right down the line and it says the representative, when a matter is brought to his attention—

Trial Examiner PARADISE. He can adjust it individually?

Mr. KEARNEY. That is right. He adjusts it collectively only when he cannot accomplish it individually under the Plan.

1292 Trial Examiner PARADISE. Isn't that analogous to the job of a ship steward of a union?

Mr. KEARNEY. I do not know whether that is the job of a ship steward or not.

Trial Examiner PARADISE. That is one of the things that a ship steward does.

Mr. KEARNEY. I am willing to accept it if you say so.

Trial Examiner PARADISE. I will sustain the objection to the question in view of your stated purpose in answering as to it.

The answer will be stricken.

Mr. KEARNEY. And I note an exception.

I believe that is all.

Mr. BLUM. No questions.

Mr. SKINNER. I wish to note an exception also, if Your Honor please.

Mr. KEARNEY. That is all.

Trial Examiner PARADISE. You may step down.

(Witness excused.)

CLAUDE CARTER, a witness called for and on behalf of the Intervener, being first duly sworn, was examined and testified as follows:

1295 By Mr. KEARNEY:

Q. Will you please state your name and residence, sir?

A. Claude Carter; 307 Hickory Avenue, city.

Q. The City of Newport News?

A. Yes, sir.

Q. Where are you employed, Mr. Carter?

A. The shipyards.

Q. How long have you been employed there?

A. 23 years.

Q. In what department are you employed?

A. In the welding department.

Q. Are you a member of the Representation Plan in the shipyard?

A. I am.

Q. Are you the representative of your district on the Employees' Representative Committee?

A. I am.

Q. How long have you been a representative?

A. Four years, with one year's interruption.

Q. Were you one of the men elected as representative to serve from the period from July 1, 1937, to June 30, 1938, Mr. Carter?

A. I was.

1296 Q. In the election in which you were elected in June, 1937, did a majority of the men in your district participate in the election?

A. Yes, sir; they did.

Q. And did you get a majority of the votes of the men in your district?

A. I did; yes, sir.

Q. Are you able to say, Mr. Carter, whether a majority of the men in your district are satisfied with and desire the continuation of the Employees' Representative Plan?

A. I have never heard any complaint about it.

Q. Has there been any interference by the company or by any person connected with the company in a supervisory capacity with the free selection of a representative from your district?

A. No, sir; there has not.



Q. During the four years during which you have been representative, have you been able to successfully negotiate matters? I mean with the company with regard to matters affecting hours, wages, and conditions under which the men work?

A. Yes, sir.

Q. I believe you were one of the gentlemen who was elected or selected to go to this Industrial Conference in Asheville, North Carolina?

1297 A. I was; yes, sir.

Q. And you went there, did you?

A. I did.

Q. And your expenses to that conference were paid by whom?

A. They were paid by the cashier's office.

Q. By the shipyard?

A. I suppose that is right. That is where I got it.

Q. Did you get your pay also?

A. Yes, sir; I did.

Q. So that your expenses down there were paid and you received your pay while you were there?

A. Yes, sir; and I received my pay while I was there.

Q. Who was the principal speaker at the conference, Mr. Carter?

A. I would say Mr. McGrady was.

Q. Do you mean Mr. Edward McGrady, the Assistant Secretary of Labor?

A. Yes, sir.

1298

1299 Mr. KEARNEY. I believe that is all.

Mr. BLUM. No questions.

1300 HERBERT TIGHE, a witness called for and on behalf of the Intervener, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. KEARNEY:

Q. Please state your name and residence.

A. Herbert Tighe; Hilton Village.

Q. Hilton Village is a community which is just outside of Newport News, in Warwick County, Mr. Tighe?

A. Yes, sir; it is.

Q. Where are you employed, Mr. Tighe?

A. At the Newport News Shipbuilding and Drydock Company.

Q. In what department are you employed?

A. I am a pattern maker in the pattern department.

Q. How long have you been employed in the shipyard, Mr. Tighe?

A. I have been employed in the shipyard since 1912. But I was out about five years. I don't know what the year was. It was between 1921 and 1926, I think.

Q. You say that you are a pattern maker? Is that right?

A. Yes, sir; that is right.

Q. And do you belong to the American League of Pattern Makers of North America?

A. The Pattern Makers League of North America.

1301 Q. How long have you belonged to that Pattern Makers League of North America, Mr. Tighe?

A. Practically ever since 1917, when I changed my trade.

Q. Has the shipyard on any occasion recognized your local union?

A. Yes, sir.

Q. As a bargaining agency?

A. Yes, sir.

Q. And dealt with you as such?

A. Yes, sir; it has always.

MR. BLUM. That is objected to.

TRIAL EXAMINER PARADISE. The objection is sustained.

MR. KEARNEY. The purpose of that is that the Board's attorney asked the same question of Mr. Blanton.

MR. BLUM. I do not recall asking the question. I accept Mr. Kearney's statement that I did and I will withdraw the question, Mr. Examiner.

MR. KEARNEY. I do not have the copy of the record and I have not read through the record, but my distinct recollection is that he asked Mr. Blanton that question, Mr. Examiner.

MR. BLUM. I will withdraw the question.

TRIAL EXAMINER PARADISE. I have no recollection of it. But you say the objection is withdrawn, do you, Mr. Blum?

MR. BLUM. Yes, Mr. Examiner.

1302 TRIAL EXAMINER PARADISE. All right. You may go ahead.

THE WITNESS. Ask the question again, please.

By MR. KEARNEY:

Q. When the Employees' Representative Plan was first adopted in the shipyard, Mr. Tighe, did the Pattern Makers join in the participation in that plan?

A. Yes, sir; they did.

Q. And have they continued to participate and join in that plan?

A. No, sir.

Q. All of the time?

A. No, sir; they have not.

Q. They dropped out for a period of time, did they?

A. Yes, sir; they did.

Q. How did they get back in?

A. As far as I can remember, I think it was in 1932 when we were under a district with the foundry. We were in the same division, and the foundry, having more men than the pattern makers, it was able to out-vote us. The pattern makers felt that a man in the foundry was not able to represent the pattern maker in any grievance that they had. The pattern makers felt that the pattern makers were not able to present a grievance of a moulder. So in December of 1923 we held a meeting and we petitioned the company voluntarily to give us a representative on this Plan.

1302 I think our petition went to the superintendent, signed by our executive committee, and I think these fellows would call it a shop steward. But we do not. We call it our executive committee.

Q. That is in the union?

A. No; it is not. It is in this Pattern Makers' Association.

Q. The Pattern Makers' Association?

A. Yes, sir.

Q. Was it agreed between the Pattern Makers' Association and the company that you all might select a representative from the Pattern Makers' Department alone?

A. Yes, sir.

Q. And have you been working under that arrangement since that time, Mr. Tighe?

A. Yes, sir. And I would like to add that we always appoint an officer on this committee of the Pattern Makers' Association.

Q. I was going to ask you about your membership in your association, but I will withdraw that.

A. I do not refuse to answer that question.

Q. Well, let me ask you this question, Mr. Tighe. Is the Pattern Makers' Department organized in any independent association or organization nationally?

A. We call our association—I can answer that better in this way, by saying that the only difference between us and the Bar Association is that we are associated with the American Federation of Labor.

Q. You in your organization are associated with the American Federation of Labor?

A. Yes, sir.

Q. And the Bar Association is associated with the American Bar Association?

A. Yes, sir.

Q. Is that the similarity that you wish to draw?

A. That is how I draw it.

Mr. BLUM. Ask him about the Lawyers' Guild.

Mr. KEARNEY. He wants to ask you about the Lawyers' Guild. I belong to that.

Q. I asked, Mr. Tighe, was whether the men in your department belong to that national association?

The WITNESS. We are affiliated with the American Federation of Labor.

By Mr. KEARNEY:

Q. You do not have any objection in your department to belonging to that association?

1305 A. Well, I will say 99.9 percent. One of them in the department is behind in his dues.

Q. Has there been any discrimination against anybody in your department because of their affiliation with that organization?

A. Absolutely not.

Mr. BLUM. That is objected to. I move that the answer be stricken out.

Trial Examiner PARADISE. Well, it has been answered. I will let it stand.

By Mr. KEARNEY:

Q. You were elected as a representative of your department and association when the election took place in June?

A. Yes, sir.

Q. Were you elected by a majority of the men in your department?

A. I don't know, and I couldn't recall what the final vote was. I would not say that it was a majority; but I was elected. If you tell me what the final vote was I can tell you whether it was a majority.

Q. You were elected certainly by a majority of those who participated in that election, were you?

A. Yes, sir; I was.

Q. But that is not my question. My question was whether you were elected by a majority of the men in your department.

A. I don't know.

Q. You say you don't know because you don't know what the vote was?

A. No; I don't know.

Q. I will see if I can find what the vote was.

A. I think it was 29 to 13; something like that.

Q. The information I have is that there were twenty votes cast for you and nine for E. R. Matthews and four for E. B. Langslow, Jr.

By Trial Examiner PARADISE:

Q. How many men are there in your department?

A. There are thirty-three.

Q. I beg your pardon?

A. There are thirty-three.

Q. Is that the total number of men in your department?

A. Yes, sir; the total number of men voting.

Q. How many men are there in your department?

A. Oh, we have a foreman and an assistant foreman and what we call two checkers. Neither one of them votes.

By Mr. KEARNEY:

Q. How many men are there in your department eligible to vote, or how many were eligible to vote at that time?

A. There were 33 who were eligible to vote.

Q. And all of them voted, did they?

A. Yes, sir.

Q. All of them voted?

A. Yes, sir; they did.

Mr. KEARNEY. That is all.

Mr. BLUM. No questions.

Trial Examiner PARADISE. You may step down.

(Witness excused.)

Mr. KEARNEY. I wonder if the Examiner would give me a recess for about five minutes? It might be that I have finished.

Trial Examiner PARADISE. At this time we will recess for five minutes.

(Thereupon, a short recess was taken, at the conclusion of which the following occurred:)

Mr. KEARNEY. In view of the stipulation that counsel have agreed to, Mr. Examiner, we rest.

### *Agreement*

Mr. MARSHALL. Mr. Examiner, you will probably recollect that yesterday when Mr. Robeson, the Personnel Director of the Shipyard, was on the stand, he testified that he had made no phone call to Amphill, that is, to the du Pont plant at Amphill, on 1308 June 29, 1937, and that he had endeavored to find out if anybody else in the department had done so, and his information was that they had not.

On cross-examination, Mr. Blum asked if Mr. Ferguson could have me call. At the end of the evidence yesterday we reserved the right to take Mr. Ferguson's deposition on that point.

Mr. Ferguson has been phoned to and we have a telegram from Mr. Ferguson this morning, which I have shown to Mr. Blum, and Mr. Blum, as I understand it, has agreed that it may go into the record that if Mr. Ferguson were here he would testify as follows:

"I categorically deny that I telephoned the du Pont Company on June 29th, 1937, about employees in the shipyard named Bell, Anderson, Wright, or Dillon, or about any other employees on that date or at any other time."

That is a telegram from Homer L. Ferguson.

1334

### *Board's Exhibit 1-k*

## REPRESENTATION OF EMPLOYEES IN THE PLANT OF THE NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY, NEWPORT NEWS, VIRGINIA

Plan Adopted 6/30/27.

By-Laws Revised 7/1/29.

By-Laws Revised 10/5/31.

By-Laws Revised 5/2/34.

By-Laws Revised 12/8/36.

By-Laws Revised 6/30/37.



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### 1337 PRINCIPLES OF REPRESENTATION OF EMPLOYEES OF NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY

In order to assure to the employees of the Newport News Shipbuilding and Dry Dock Company full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment and other mutual aid or protection; to provide an orderly and expeditious procedure for prevention and adjustment of any differences which may arise regarding employment; and to prevent loss of time and stoppage of work while any such differences are pending, the principles of employee representation are hereby reaffirmed by the employees and the Company and to those ends the following rules are hereby adopted:

## ARTICLE I

Representation shall be on the following basis:

SEC. 1. For purpose of Representation, the Shipyard shall be divided into Districts, each composed of one or more departments. Where in the judgment of the Executive Committee (created as hereinafter provided), the number of employees in any one 1338 department is not sufficient to warrant a representative, the Executive Committee may combine that department with one or more others of related function to form a district.

Such other adjustments as may be necessary to meet special cases shall be made by the Executive Committee.

## ARTICLE II

## Terms of Employee Representatives

SEC. 1. Representatives shall be elected for a term of one year and shall be eligible for re-election. A representative thus elected shall be called employee representative and as such shall be a member of the Employees' Representative Committee, created as hereinafter provided.

SEC. 2. A Representative may be recalled upon the approval by the Executive Committee of a petition signed by two-thirds of the voters in the group he represents.

SEC. 3. A Representative shall be deemed to have vacated his office upon severance of his relations with the Company or upon his appointment to such regular position as would place him with the rank of leading man or above, or transfer to another department.

SEC. 4. The Executive Committee shall fill vacancies either by seating the candidate receiving the next highest number of 1339 votes in the last election, by special election, or by appointment, and its decision as to the manner of filling the vacancy shall be final.

## ARTICLE III

## Qualifications of Representatives and Voters

SEC. 1. Except as provided in Section 2 of this Article, any employee who has been on the Company's pay roll for a period of one year prior to nominations, who is twenty-one years of age or over, and who is an American-born citizen shall be considered qualified for nomination and election as a Representative.

SEC. 2. Company officials and supervisors from leading men up, or men acting in the capacity of supervisors are not eligible for election as Representatives.

SEC. 3. All employees, except Company officials and supervisors from leading men up, who have been on the Company's pay roll for a period of sixty (60) days prior to the date fixed for nominations shall be entitled to vote.

## ARTICLE IV

## Nominations and Elections

SEC. 1. Nominations and elections shall be held annually in June.

SEC. 2. Nominations and elections shall be arranged for and  
1340 conducted by the employees in accordance with rules and regulations prescribed by the Executive Committee.

SEC. 3. Nominations and elections shall be by secret ballot, and so conducted as to avoid undue influence or interference with voters in any manner whatsoever, and to assure fairness in the counting of ballots.

SEC. 4. Three persons may be nominated for every person to be elected, but any voter may place two names in nomination.

SEC. 5. Nominations of employee representatives shall be held on the second Tuesday, and elections on the following Tuesday of the month named. In event of either of these days being a holiday, the day immediately following shall be substituted. The newly-elected Representative's term of office shall begin July 1 following his election.

SEC. 6. On the day of the nomination, each duly qualified voter present and desiring to vote shall be furnished with a printed ballot on which he shall write the names of the persons he desires to nominate as Representatives. The ballot shall have printed at the top the words "Employees' Representation, Newport News Shipbuilding and Dry Dock Company," the nominations, and the date.

SEC. 7. If, on any ballot, the same name is placed in nomination more than once, it shall be counted but once.

SEC. 8. Should the number of persons nominated on any ballot exceed two, the permitted number, the ballot shall be void.

1341 SEC. 9. The three candidates who have received the largest number of votes shall be declared nominated, and shall be candidates for election.

SEC. 10. On the day of election, each duly qualified voter shall be furnished by the Executive Committee with a printed ballot on which the names of the candidates shall be printed in alphabetical order and at the top the words "Employees' Representation, Newport News Shipbuilding and Dry Dock Company—Election," and the date. The voter shall indicate his preference by placing a cross (X) opposite the name of the candidate of his choice.

SEC. 11. Each voter shall deposit his own ballot in the box provided for the purpose. The ballots shall be counted under the direction and supervision of the Executive Committee. The candidate receiving the highest number of votes shall be declared elected.

SEC. 12. In the event of a tie, seniority in the Company's employ shall determine the choice.

SEC. 13. In the event of a controversy concerning any nomination or election, it shall be referred to and decided by the Executive Committee.

SEC. 14. The Executive Committee may make such provision as they may consider necessary for assisting any voter who may so request in filling out or marking his ballot, at any nomination or election.

1342 SEC. 15. Immediately following the counting of ballots at any nomination and election, the Executive Committee shall seal the ballots and store them for safe-keeping until it shall make and file in the permanent records of the Committee a detailed report of said nomination or election, as the case may be, which report shall show the total number of ballots printed, the total number handed out, the total number voted and the total number of unused ballots; the names of the persons nominated or elected, as the case may be; and votes cast for each, and any other such matter as the Executive Committee may consider proper or desirable.

#### ARTICLE V

#### Management's Representative

The Company shall appoint a Management's Representative or Representatives. He, or they, shall keep the Management in touch with the Employee Representatives, and represent the Management in negotiating with the Employee Representatives, their Officers, and Committees.

#### ARTICLE VI

#### Committees

##### SEC. 1. Employees' Representative Committee:

The representatives so elected shall compose the Employees' Representative Committee and shall be called together not later than June 30, by the Secretary of the current Employees' Representative Committee, who shall preside, or designate who shall preside during the election of a temporary chairman and secretary, to conduct the election of permanent officers.

The Committee shall then elect a chairman, vice-chairman, secretary, and an executive committee of not less than five (5) members.

The Committee shall set a time and place for regular monthly meetings.

The Chairman shall preside at all meetings of the Employees' Representative Committee. In the absence of the Chairman the Vice-Chairman shall preside.

The Secretary shall have charge of all books, papers, records of nominations and elections, etc., belonging to the Committee, record the minutes of all meetings, write and send notices of meetings and perform such other duties as may be assigned by the Chairman. Should both Chairman and Vice-Chairman be absent, the Secretary

shall open the meeting and conduct the election of a Chairman pro tempore. At the conclusion of his term of office the Secretary shall deliver to his successor all records and other property of the Committee which may be in his possession.

Meetings of the Employees' Representative Committee shall 1344 be held monthly at such time on such date as may be selected by the Committee. (The Management's Representative, when requested, shall meet with this Committee, but have no vote.)

Special meetings may be held when called by the Chairman, or upon the written request of seven representatives. Notices of special meetings must include the subject or subjects to be considered, and no other matters may be considered without the consent of two-thirds of those present.

A quorum shall be a majority of the representatives.

This Committee may take action on such matters as are presented either by representatives, sub-committees, or the Management's Representative. The action of this Committee shall be final, and become effective upon agreement by the Company.

SEC. 2. The Executive Committee.

The Executive Committee shall be composed of not less than five (5) representatives to be elected by the Employees' Representative Committee, and shall take final action on such matters as may be referred to it by the Employees' Representative Committee, subject, however, to the approval of the Employees' Representative Committee, and shall perform such other duties as may be imposed on it in connection with carrying out this plan of employee representation.

1345 SEC. 3. Sub-Committees.

When either standing committees (Employee's Representative Committee or the Executive Committee) shall desire any matter under consideration by it referred to a sub-committee, it shall request the Chairman of the Employee's Representative Committee to appoint a sub-committee and to refer such matter to such Committee so appointed by him. Reports and recommendations of sub-committees shall be made to the Employee's Representative Committee and shall be final if and when approved by it.

Such sub-committees shall consider only the matters for which they may be respectively appointed. No sub-committee shall be a standing committee.

## ARTICLE VII

### Procedure of Adjustment

SEC. 1. Any matter which in the opinion of any employee or group of employees requires adjustment, and which such employee or group of employees have been unable to adjust with the person in charge of



the work on which he or they are engaged, may be taken up by such employee or group of employees through his or their representative.

First—With the Foreman or Head of the Department.

Second—With the Management's Representative.

1346 Third—With one of the superior officers of the Company, or with the Employees' Representative Committee

which Committee shall refer the matter after discussion, to a specially appointed sub-committee which shall investigate and report not later than at the next regular monthly meeting of the Employees' Representative Committee.

SEC. 2: Unless a satisfactory disposition of any such matter has been effected within a reasonable time, any employee or group of employees through his or their representative may require such matter to be referred to the Executive Committee by a request in writing addressed to said Committee, specifying in detail the matter requiring adjustment and the reasons which warrant its consideration by said Committee. The Executive Committee shall consider any such matter, with reasonable promptness, at a regular or special meeting, and may adopt such means as are necessary to ascertain the facts, and effect a settlement.

SEC. 3. If the Executive Committee fails to effect a settlement, the Personnel Manager or the General Manager of the Company shall be notified.

SEC. 4. If any issue presented by an employees' representative to the Employees' Representative Committee is referred by that body to either the Executive or a sub-committee or special committee, it shall be the duty of the representative to appear before  
1347 the Committee.

#### ARTICLE VIII

##### Guaranteeing the Independence of Representatives

SEC. 1. Each representative shall be free to discharge his duties in an independent manner, without fear that his individual relations with the Company may be affected in the least degree by any action taken by him in good faith in his representative capacity.

To insure to each representative his right to such independent action, he shall have the right to take the question of any alleged personal discrimination against him, on account of his representative capacity, to any of the superior officers of the Company and to the Employees' Representative Committee.

#### ARTICLE IX

##### Amendments

SEC. 1. Any article in this book may be amended at any regular meeting by a favorable vote of two-thirds of the entire membership of the Employees' Representative Committee. Such amend-

ments shall be in effect at the time specified by the Employees' Representative Committee, unless disapproved by the Company within 15 days after their passage.

1348 *Board's Exhibit 11*

REPRESENTATION OF EMPLOYEES, REVISED OCTOBER 1931 IN THE PLANT OF THE NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY, NEWPORT NEWS, VIRGINIA

1349 Representation of Employees, Revised October 1931, in the Plant of the Newport News Shipbuilding and Dry Dock Company, Newport News, Virginia, 144385-A

1350 PRINCIPLES OF REPRESENTATION

In order to give the employees of the Company a voice in regard to the conditions under which they labor, and to provide an orderly and expeditious procedure for prevention and adjustment of any future differences, and to anticipate the problems of continuous employment, a method of representation of employees has been established.

## I.

Representation shall be on the following basis:

There shall be elected as hereinafter provided from each Yard Department and from each General and Service Division one representative for white employees and one representative for colored employees, provided the number of such employees is sufficient to warrant a representative elected from this Department or Division. In cases where the number of such employees is not considered sufficient these employees may select by majority vote any elected representative or otherwise the Executive Committee shall appoint a representative from those elected to represent this group of employees.

Such adjustments as may be necessary to meet special cases shall be made by the Management's Representative.

1351

## II

### Terms of Representatives

1. Representatives shall be elected for a term of one year and shall be eligible for reelection. A Representative thus elected shall be called an Employee Representative and shall be paid sixty dollars (\$60.00) a year, payable fifteen dollars (\$15.00) quarterly. A deduction of five dollars (\$5.00) will be made for failure to attend a regular meeting without reasonable excuse acceptable to the General Joint Committee.

2. A Representative may be recalled upon the approval of the Executive Committee of a petition signed by two-thirds of the voters of the group he represents.

3. A Representative shall be deemed to have vacated his office upon severance of his relations with the Company or upon his appointment to such regular position as would place him with rank of leading man or above.

4. The Executive Committee shall fill vacancies either by seating the candidate receiving the next number of votes, by special election, or by appointment, and their decision as to manner of filling vacancy shall be final.

### III

#### Qualifications of Representative and Voters

1. Any employee who has been on the Company's pay roll for a period of one year prior to nominations, who is twenty-one  
1352 years of age and over, and who is an American citizen shall be considered qualified for nomination and election as a Representative.

2. All employees who have been on the Company's pay rolls for a period of sixty (60) days prior to the date fixed for nominations shall be entitled to vote.

3. Company officials and supervisors from leading men up, or men acting in capacity of leading men are not eligible for Representatives.

### IV

#### Nominations and Elections

1. Nominations and elections shall be held annually in June.

2. Nominations shall be held on the second Monday, and the elections on the following Friday of the month named. In event of either of these days being a holiday, the day immediately following shall be substituted. The newly elected Representative's term of office shall begin July 1st following his election.

3. Nominations and elections shall be arranged for by the Management's Representative, but in so far as possible conducted by the employees themselves in accordance with rules and regulations prescribed by the Executive Committee.

4. There shall be three persons nominated for every person to be elected, but voters may place two names in nomination.

1353 5. Nominations and elections shall be by secret ballot, and so conducted as to avoid undue influence or interference with voters in any manner whatsoever, and to prevent any fraud in the counting of ballots.

6. On the day of nomination each duly qualified voter shall be furnished with a ballot on which he shall write the names of the persons he desires to nominate as Representatives.

7. If, on any ballot, the same name is placed in nomination more than once, it shall be counted but once.

8. Should the number of persons nominated on any ballot exceed two, the permitted number, the ballot shall be void.

9. The three candidates who have received the largest number of votes shall be declared nominated, and shall be candidates for election.

10. On the day of elections, each duly qualified voter shall be furnished by the Executive Committee with a ballot on which the names of the candidates shall be printed in alphabetical order. The voter shall indicate his preference by placing a cross (X) opposite the name of the candidate of his choice.

11. Each voter shall deposit his own ballot in the boxes provided for the purpose. The ballots shall be counted under the direction and supervision of the Executive Committee. The candidate receiving the highest number of votes shall be declared elected.

12. In the event of a tie, seniority in the Company's employ shall determine the choice.

13. In the event of a controversy arising concerning any nomination or election, it shall be referred to and decided by the Executive Committee.

14. The Executive Committee may make such provision as they may consider necessary for assisting any voter, who may request, in properly marking his ballot.

## V.

### Representatives of Management.

1. The Company shall appoint an equal number of Representatives to the number of elected employee representatives.

2. Vacancies of Representatives of Management shall be filled by appointment, and such appointments shall be made by the Management's Representative.

## VI

### Management's Representative

The Company shall appoint a Management's Representative.

The Management's Representative shall keep the Management in touch with the Representatives, and represent the Management in negotiating with the Representatives, their officers, and Committees. He shall respond promptly to any request from Representatives, and shall interview all of the Representatives, from time to time, but not less frequently than once every month, with reference to matters of concern to employees, and report the result of such interviews to the Management.

## VII

## Committees

## 1. General Joint Committee.

The General Joint Committee shall be composed of all elected Employees' Representatives, and all appoint'd Representatives of Management.

Meetings of the General Joint Committee shall be held monthly at 4:10 P. M. on such date as may be selected by this Committee. The Management's Representative shall meet with this Committee, but have no vote.

A quorum shall be a majority of the elected Representatives and a majority of the Representatives of Management.

This Committee shall elect from the elected Representatives a Chairman, Vice Chairman, and Secretary. The Secretary to receive additional compensation of five dollars (\$5.00) per month.

This Committee may take action on such matters as are presented either by Representatives, Subcommittees, or the Management's Representative. The action of this Committee, when approved by the President of the Company, shall be final.

## 2. Executive Committee.

The Executive Committee shall be composed of five elected Representatives, to be elected by the elected Representatives and five Representatives of Management to be appointed by the Management's Representative.

The Executive Committee shall take final action on such matters as may be referred to this Committee by the General Joint Committee, subject to approval by the General Joint Committee, and shall perform such other duties as have been designated in connection with carrying out this Plan of Employee Representation.

## 3. Subcommittees.

A subcommittee, consisting of five elected Representatives to be appointed by the Chairman, and five Representatives of Management to be appointed by the Management's Representative, shall be appointed to consider any matter which has been referred to such committee by the General Joint Committee, or the Executive Committee, but no subcommittee shall be a standing committee, and shall only consider the matter for which this committee was appointed.

The reports and recommendations of subcommittees shall be made to the General Joint Committee, and shall be final if accepted by the General Joint Committee.

There shall be no committee of elected Representatives, and no committee of Representatives of Management.

## VIII

## Procedure or Adjustment

1. Any matter which in the opinion of any employee requires adjustment, and which such employee has been unable to adjust with



person in charge of the work on which he is engaged, may be taken by such employee, either in person or through his Representative.

First—With the Foreman or Head of the Department.

Second—With the Management's Representative.

Third—With one of the superior officers of the Company, or the General Joint Committee who shall refer, after discussion, to a specially appointed subcommittee.

2. Unless a satisfactory disposition of any such matter has been effected within a reasonable time, any employee through his Representative, or the Management through the Management's Representative, may require such matter to be referred to the Executive Committee by a request in writing addressed to said Committee, specifying in detail the matter requiring adjustment and the reasons which warrant its consideration by said committee. The Executive Committee shall consider any such matter, with reasonable promptness, at a regular or special meeting, and may adopt such means as are necessary to ascertain the facts and effect settlement.

3. Any issue presented by an Employee's Representative to the General Joint Committee and referred by that body to either the Executive or a Special Committee, it would be the duty of the Representative to appear before the Committee.

4. If the Executive Committee fails to effect a settlement, the President of the Company shall be notified?

## IX

### Guaranteeing the Independence of Representatives

It is understood and agreed that each Representative shall be free to discharge his duties in an independent manner, without fear that his individual relations with the Company may be affected in the least degree by any action taken by him in good faith in his representative capacity.

To insure to each Representative his right to such independent action, he shall have the right to take the question of an alleged personal discrimination against him, on account of his representative capacity, to any of the Superior Officers, to the General Joint Committee and to the President of the Company.

## X

### Amendments

Any method of procedure hereunder may be amended at any time by two-thirds vote of the entire membership of the General Joint Committee, when approved by the President of the Company.

## MINUTES OF THE GENERAL JOINT COMMITTEE

TUESDAY, MAY 11, 1937

The May meeting of the General Joint Committee was called to order in the Athletic Building at 4:15 P. M., Tuesday, May 11, 1937, by the Chairman, Blair Blanton.

The minutes of the April meeting were approved as read.

Roll call showed the following members absent:

Appointed: J. W. Boutchard, David Dick, O. J. G. Folkmann, S. A. Hickey, B. F. Knowles, G. R. Massenburg, C. A. Walthers, E. A. Neill (working), Chas. P. Scott (working).

Elected: Alphonso Smith (vacation), W. L. Johnson (sick), R. A. Gares (sick), Z. B. Manley (sick), Wm. Burnett.

On motion of I. C. Wilkins, Dist. 21, seconded by E. E. Brockley, Dist. 15, the report of the special committee appointed to confer with representatives of a local hospital relative to a group hospitalization plan was approved. The chairman continued the present committee and stated that additional members would be added later. The report forms a part of the minutes of this meeting.

On motion of J. C. Johnson, seconded by E. S. Baysden, the committee referred to the Elected Representatives the report of the Executive Committee submitting a revised plan of representation. The action of the Elected Representatives to be reported to the Joint Committee at an adjourned joint meeting subject to the call of the Chairman. In the meantime all members of the committee to be supplied copies of the plan.

E. E. Brockley, Dist. 15, explained his vote for the 40-hour workweek on the basis of the Navy Department's approval of same, but desired to know how the Management explained the reported lay-offs in certain departments. The Management's Representative stated that; in his opinion, the adoption of a 40-hour workweek had no effect on the number of persons employed, and that such lay-offs as had been made was due to lack of work in those particular departments.

There being no further business, the appointed representatives were excused, and after discussion, the Chairman called a meeting of the Elected Representatives for Monday, May 17, 1937, at 4:10 P. M. in the Athletic Building to consider the Executive Committee's report.

Adjournment followed.

I. C. WILKINS,

*Secretary.*

## MINUTES OF CALLED MEETING OF ELECTED REPRESENTATIVES

Monday, May 17, 1937

A call meeting of the Elected Representatives was held in the Athletic Building on Monday, May 17, 1937, at 4:15 P. M. to consider the Plan of Representation submitted by the Executive Committee to the General Joint Committee and referred to the Elected Representatives for their recommendations by the May meeting of the General Joint Committee.

Roll call showed the following Elected Representatives absent:

Alphonso Smith, W. L. Johnson (sick), E. E. Brockley, Miss Harriet Little, R. A. Gares (sick), Z. B. Manley (sick), F. Rylander, Wm. Burnette.

The draft of the Plan of Representation as submitted by the Executive Committee was read section by section and discussed at length following which on motions duly made, seconded and carried the Elected Representatives make the following recommendations to the General Joint Committee:

1. That Art. II, Sec. 2 be omitted and that Sec. 3, 4, & 5 be numbered Art. II, Sec. 2, 3, & 4, respectively.

2. That Article V be amended to read as follows: "The Company shall appoint a Management's Representative or Representatives. He shall keep the Management in touch with the representatives, and represent the Management in negotiating with the representatives, their officers, and committees."

3. That the Plan of Representation as amended above be approved by the General Joint Committee.

4. That the revised Plan, if adopted by the General Joint Committee, to be effective June 30, 1937.

During the discussion the Representatives of present Districts 13 and 15 called attention to the difficulty of adequate representation in their districts due to the present grouping of more or less unrelated departments. The Chairman referred this matter to the Executive Committee for their consideration.

Messrs. Dews and Via was appointed to inform the Appointed Representatives of the proposed revisions in the Plan as submitted by the Executive Committee.

The Secretary was instructed by the Chairman to send out notices for an adjourned meeting of the General Joint Committee on Thursday, May 20, 1937, at 4:10 P. M. in the Athletic Building.

Adjournment followed.

I. C. WILKINS.

*Secretary.*

1362

*Board's Exhibit 14*

[1927 Plan]

REPRESENTATION OF EMPLOYEES IN THE PLANT OF THE NEWPORT NEWS  
SHIPBUILDING AND DRY DOCK COMPANY, NEWPORT NEWS, VIRGINIA

1363 Representation of Employees in the Plant of the Newport  
News Shipbuilding and Dry Dock Company, Newport News,  
Virginia

1364

PRINCIPLES OF REPRESENTATION

In order to give the employees of the Company a voice in regard to the conditions under which they labor, and to provide an orderly and expeditious procedure for the prevention and adjustment of any future differences, and to anticipate the problem of continuous employment, a method of representation of employees is to be established.

I

1. Representation shall be on the following basis:

There shall be two groups of representatives:

Twenty-one representatives for white employees shall constitute one Committee, and seven representatives for colored employees shall constitute another Committee; to be elected from districts and in manner as hereinafter provided.

Such adjustments as may be necessary to meet special cases shall be made.

2. For the purpose of making as equitable a representation as practicable the plant will be subdivided according to departments and natural subdivisions, wherever it is necessary to group a number of small departments regard shall be had to logical grouping and locations.

1365 3. Adjustments in units of representation shall be made in  
accordance with the recommendations of the Committee on  
Rules.

II

Terms of Representatives.

1. Representatives shall be elected for a term of one year, and shall be eligible for reelection. Each employees' representative shall be paid \$100 a year.

2. A Representative may be recalled upon the approval by the Committee on Rules of a petition signed by two-thirds of the voters in his District.

3. A Representative shall be deemed to have vacated office upon severance of his relations with the Company or upon his appointment to such a regular position as would bring him within the meaning of Paragraph 3, Section 3, entitled "Qualifications of Representatives and Voters."

Vacancies in the office of Representative for which there is no alternate, will be filled in this manner.

The candidate receiving the next number of votes, providing that he receives 15% or more of the votes cast; if not a special election shall be held to fill the vacancy.

When a District consists of more than one unit of representation the above total number of votes shall be the total number of votes for the District.

1366

### III

#### Qualifications of Representatives and Voters

1. Any employee who has been on the Company's payroll for a period of one year prior to nominations, who is twenty-one years of age and over, and who is an American citizen, shall be considered qualified for nomination and election as a Representative.

2. All employees who have been on the Company's payrolls for a period of at least sixty (60) days prior to the date fixed for nominations shall be entitled to vote; provided, however, that in the case of first election, thirty (30) days on the Company's payrolls shall suffice.

3. Company officials from leading men up, or men acting in capacity of leading men are not eligible for Representatives, or to vote for Representatives.

### IV

#### First Nominations and Elections

1. Each division or District shall select a committee of the workmen who shall conduct the first nominations and elections in the manner prescribed herein.

### V

#### Nominations and Elections After the First Nominations and Elections

1. Nominations and elections shall be held annually, in the month of July.

2. Nominations shall be held on the second Monday, and elections on the following Friday, of the month named. In the event of either of these days being a holiday, the day immediately following shall be substituted.

1367



3. The nominations and elections (after the first nominations and elections) shall be conducted by the employees themselves, in accordance with rules and regulations prescribed by the Committee on Rules, with only such assistance from the Management as may be required by the Committee on Rules.

4. There shall be three persons nominated for every person to be elected.

5. Nominations and elections shall be by secret ballot, and so conducted as to avoid undue influence or interference with voters in any manner whatsoever, and to prevent any fraud in the counting of ballots.

6. On the day of nominations each duly qualified voter shall be furnished with a ballot stating the number of persons for whom he is entitled to vote, on which he shall write the name of the persons in his District whom he desires to nominate as Representatives.

7. A voter may place in nomination twice the number of Representatives to which his District is entitled.

8. If on any ballot the same name is placed in nomination more than once, it shall be counted but once.

1368 9. Should the number of persons nominated on any ballot exceed the permitted number as stated on the ballot, the ballot shall be void.

10. Those who have received the largest number of votes up to three times the number of representatives to be elected shall be declared nominated, and shall be candidates for election.

11. On the day of elections, each duly qualified voter shall be furnished by the Committee on Rules with a ballot on which the names of the candidates shall be printed in alphabetical order. The voter shall indicate his preference by placing a cross (X) opposite the names of the candidates of his choice.

12. Candidates to the number of Representatives to which a District is entitled, may be voted for and this number shall be stated on the ballot. If this number is exceeded, the ballot shall be void.

13. Each voter shall deposit his own ballot in the box provided for the purpose by the Committee on Rules, and the ballots shall be counted under the direction and supervision of said Committee. The candidates receiving the highest number of votes shall be declared elected.

14. In the event of a tie, seniority in the Company's employment shall determine the choice.

1269 15. In the event of a controversy arising concerning any nomination or election, it shall be referred to and decided by the Committee on Rules.

16. The Committee on Rules may make such provision as they may consider necessary for assisting any voter, who may so request, in properly marking his ballot.

## VI

### Management's Representative

The Company shall appoint a Management's Representative.

The Management's Representative shall keep the Management in touch with the Representatives, and represent the Management in negotiations with the Representatives, their Officers and Committees. He shall respond promptly to any request from Representatives, and shall interview all of the Representatives, from time to time, but not less frequently than once every month, with reference to matters of concern to employees, and report the result of such interviews to the Management.

## VII

### Committees

Duties of Committees—No. 1 Joint Committee (Rules-Ways-Means):

Operation of Plan

Cost of Operation of Plan.

Procedure.

1370 Assignment of motions.

Nomination and Election of Representatives.

Assignment of duties.

No. 2. Joint Committee (Wage, Bonus, and Piece Work):

Wages, bonus, and piece work.

Production schedules.

Employment and Working Conditions.

Practice, Methods, and Economy.

Continuous Employment and Conditions of Industry.

No. 3. Joint Committee (Safety-Pension-Relief):

Safety and Prevention of Accidents.

Pensions and Relief.

Health and Works Sanitation.

Housing and Domestic Economics.

Living Conditions.

Education and Publications.

Athletics and Recreation.

Club Activities.

• Employees Transportation and Traffic.

No. 4. Joint Committee (General Appeals-Etc.):

Suggestion System.

Apprentice System.

• Yard Store.

All other subjects not enumerated for any of the other Committees.

1371 2. There shall be a Committee to consider all matters not falling within the scope of any other Committee herein provided for and the Chairman and Secretary of the Representatives shall be members of this Committee. This Committee when jointly composed shall act as a Committee on Appeals.

3. Each Committee shall be composed of five members (except that such adjustments as may be necessary to meet special cases may be made) and shall appoint its own Chairman and Secretary.

4. Vacancies on Committees shall be filled at a regular meeting of the Representative Committee.

5. Joint Committees shall consist of the Committees of the Employees' Representatives with the addition of the Company's Representatives named by the Management, who may equal but shall not exceed in number the Employees' Representatives.

6. The Joint Committees shall select their own officers and arrange their own procedure, subject to appeal, in case of controversy, to the Joint Committee on Rules.

## VIII

### Committee Meetings

1. General Committee and Joint Committee Meetings shall be held monthly at 4 p. m.

1372 2. Special Meetings of all Committees or Joint Committees as occasion may require, may be held on approval of the Chairman of the respective committees and the Management's Representative.

3. Postponed meetings of the Committees shall be held as soon after postponement as can be conveniently arranged for by the Chairman and the Management's Representative.

4. Representatives shall have the right to appear before and be heard by a Committee on any matter of concern to the employees of District they represent.

5. A Committee, when concerned with matters of special interest to any particular department or class of employees, shall have the right of inviting into conference the Representatives of the employees and of the Management likely to be specially interested in such matters.

6. Any matter may be referred by the Management through the Management's Representative to any Committee for consideration and report, and any matter may be presented by a Committee to the Management through the Management's Representative.

1373 7. The Joint Committee on Rules shall arrange a suitable place for meetings of the Representatives, and of the several Committees and Joint Committees, and the Company shall defray such expenses as are necessarily incident to the discharge of the duties herein set forth, when approved by a majority of said Committee.

## IX

### Annual Conference

Management's Representative, together with No. 1 Joint Committee, shall arrange for Annual Conference.

## X

### Procedure for Adjustment

1. Any matter which in the opinion of any employee requires adjustment, and which such employee has been unable to adjust with the person in charge of the work on which he is engaged, may be taken up by such employee, either in person or through any representative of his District.

First—With the Foreman of the Department.

Second—With the Management's Representative.

Third—With one of the superior officers of the Company, or the General Committee who shall refer, after discussion, to No. 1 Joint Committee for assignment.

1374 2. Unless a satisfactory disposition of any such matter has been effected within a reasonable time, any employee through his Representatives, or the Management through the Management's Representative, may require such matter to be referred to the Joint Committee on Appeals by a request in writing addressed to said Committee, specifying in detail the matter requiring adjustment and the reasons which warrant its consideration by said Committee. The Joint Committee on Appeals shall consider any such matter with reasonable promptness, at a regular or special meeting, and may adopt such means as are necessary to ascertain the facts and effect a settlement.

3. If the Joint Committee on Appeals fail to effect a settlement, the President of the Company shall be notified and the matter may be referred, if the President and a majority of the Employees' Representatives on the Joint Committee agree to such reference, to an arbitrator or arbitrators, to be determined at the time according to the nature of the controversy.

## XI

### Guaranteeing the Independence of Representatives

It is understood and agreed that each Representative shall be free to discharge his duties in an independent manner, without fear  
1375 that his individual relations with the Company may be affected in the least degree by any action taken by him in good faith in his representative capacity.

To insure to each representative his right to such independent action, he shall have the right to take the question of an alleged personal discrimination against him, on account of his acts in his representative capacity, to any of the Superior Officers, to the Joint Committee and to the President of the Company.

## XII

### Amendments

Any method of procedure hereunder may be amended at any time by two-thirds vote of the entire membership of the Joint Committee on Rules, or by concurrent majority vote of the Employees' Representatives and of the Representatives of the Management at an Annual Conference.

1376

### General Notes

The Committee of twenty-one (21) White Employees' Representatives shall be known as the General Committee.

The seven (7) Colored Employees' Representatives shall be known as the Colored Committee.

The entire group of Representatives shall be known as the General Joint Committee.

The Management's Representative shall keep a monthly account of all Plan costs, and the Secretary of the General Committee will read into the minutes of each regular meeting, from this record, the total number of hours reported by the Timekeeping Department.

Any Committee failing to act promptly on any subject will be sufficient indication that that Committee is over-burdened and the No. 1 Joint Committee shall have authority to make a re-assignment.

Adopted—Cushing's Manual of Parliamentary Procedure with the provision that the Chairman of a Committee shall have full power to vote, and that six (6) members of a Joint Committee and eleven (11) members of the General Committee will constitute a quorum.

1377 It is required that in all meetings the business be completed at each session in so far as possible whenever information can be obtained even though it is necessary to invite several people before the Committee. This shall be done in preference to appointing a sub-committee to investigate and bring in the information at a later date.

It is recommended that sub-committee appointments be avoided wherever economically possible.

The new Representatives each year should have a clear understanding of the Plan. The Representatives must be advised where they function and where they do not function. It is the duty of No. 1 Joint Committee to instruct the elected and newly appointed Representatives with reference to their functions and authority in the operation of the Plan.



That in cases where matters affecting a department are presented to Joint Committee for consideration, if the department head or party concerned is a member of that Joint Committee, he shall withdraw in favor of an alternate, during the discussion of that particular matter, but he shall be allowed to remain as a witness if called upon for information.

1378

*Boards Exhibit 15*

## MINUTES OF EMPLOYEES' REPRESENTATIVE COMMITTEE

Wednesday, June 30, 1937

The Employees' Representative Committee was called to order in the Athletic Building at 4:15 P. M., Wednesday, June 30, 1937, by the Secretary of the preceding Committee. The roll was called by E. E. Brockley with the following members absent: J. G. Wilson (vacation), Chas. Boyd (sick).

The Committee then elected E. E. Brockley and G. E. Via, temporary chairman and secretary, respectively, to conduct the election of permanent officers, which immediately followed.

Dave Keith and Blair Blanton were nominated for Chairman. The result of the balloting being Keith 18 and Blanton 23; Blanton was declared elected Chairman.

H. Tighe and J. T. Pierce were nominated for Vice-Chairman. The result of the balloting being Tighe 29 and Pierce 12; Tighe was declared elected Vice-Chairman.

I. C. Wilkins, being the only nominee for Secretary, was unanimously elected.

On motion of Dave Keith, seconded by J. T. Pierce, the Committee voted to elect 5 white and 2 colored representatives on the Executive Committee. The following were elected: J. G. Wilson, C. A. Dews, Claude Carter, Dave Keith, W. N. Woodall, J. J. King, and Solomon Travis.

The permanent officers were then installed and the Management's Representative was presented to the Committee. He spoke briefly regarding his and the Committee's responsibility, for maintaining satisfactory employer-employee relationship in the plant and pledged his cooperation in any matters which might arise.

On motion duly made and seconded the Committee voted to hold the regular monthly meetings in the Athletic Building on the second Tuesday of each month, beginning with the 13th of July.

Nomination and election followed for delegates to the Southern Industrial Conference at Blue Ridge, N. C., July 15-17, inclusive, the results being as follows:

H. Tighe, 33, Delegate; C. E. Cole, 32, Delegate; Claude Carter, 29, Delegate; J. J. Smith, 20, Delegate; C. A. Dews, 26, Delegate; H. L. Overman, 19, 1st yard Alternate; R. C. Short, 17, 2nd yard

Alternate; B. A. Mitchell, 10, 3rd yard Alternate; R. F. Pierce, 10, 1st Office Alt.; L. T. Shores, 4, 2nd Office Alt.

Adjournment followed.

I. C. WILKINS,  
Secretary.

1379

*Board's Exhibit 16*

MINUTES OF THE EMPLOYEES' REPRESENTATIVE COMMITTEE

Tuesday, July 13, 1937

The Employees' Representative Committee was called to order in the Athletic Building at 4:15 p. m., Tuesday, July 13, 1937, by the Chairman, Blair Blanton.

The minutes of the June 30th meeting were approved as read.

Roll call showed the following absent:

Chas. L. Mendel, W. N. Woodall (vacation), Chas. Boyd (sick), and J. T. Pierce, H. L. Overman, E. E. Brockley, Isaac Hardy, J. J. King, T. V. Williams, and L. Thompson on trial trip.

The report of the Executive Committee was read and ordered filed.

The report of the special committee appointed by the preceding committee to study the matter of paying off under shelter was read and the following recommendation adopted:

"That this committee recommend to the Management that in case of a storm at pay time, paying off should start right after the four o'clock whistle, and the pay windows remain open for a reasonable length of time in order to give an opportunity to wait for the storm to let up."

The committee voted to extend temporarily the terms of J. T. Pierce and J. J. King as Trustees of the Shipyard Benefit Loan Fund.

The report of the Trustees of the Loan Fund showing 176 loans totalling \$10,480.90 to June 30, 1937, was read and ordered filed.

The Treasurer of the Credit Union reported a balance of \$123.31 on deposit with the Credit Union to the credit of the Employees' Representatives.

The report of the Hospitalization Committee was deferred.

L. T. Shores called for the report of the preceding Executive Committee relative to the proposed amendment to the By-laws and H. Tighe explained the action of the Executive Committee in postponing action on the suggested amendment to Art. 3, Section 1 of the Plan of Representation and moved that the section remain as previously adopted. An amendment to the motion made by D. Keith, that the motion be tabled until a later meeting was lost, and on the vote of the Committee the original motion prevailed.

The Committee adopted the following recommendation:

"In order that the men in each and every department may have a representative present at all times, the committee recommends

to the Management that all Elected Representatives be kept on a full time basis, as far as possible."

On motion of G. E. Via, seconded by D. Keith, the Committee voted to appoint a committee of 7 to confer with the Chairman, and consider the advisability of securing counsel to protect the interests of employees and employees' representatives in the plant who are not in favor of being represented by an affiliate of the Committee for Industrial Organization. The Chairman appointed the following: L. T. Shores, Dave Keith, J. G. Wilson, Emery Stone, C. H. Oliver, Solomon Travis and R. G. White, and called them to meet at the conclusion of this meeting.

Adjournment followed.

I. C. WILKINS,  
Secretary.

1380

*Board's Exhibit 18*

MINUTES OF THE EMPLOYEES' REPRESENTATIVE COMMITTEE

Tuesday, August 10, 1937

The Employees' Representative Committee was called to order in the Athletic Building at 4:15 P. M., Tuesday, August 10, 1937, by the Chairman, Blair Blanton.

The minutes of the July 27th meeting were approved as read.

Roll call showed all members of the committee present.

The report of the Delegates to the Southern Conference on Human Relations in Industry was read and ordered filed. The Secretary was instructed to furnish a copy of this report to the Management's Representative.

The Secretary read for the information of the Committee the General Manager's memoranda relative to the recommendations adopted by the Committee at the July 13th meeting.

The Chairman discharged the committee appointed at the July 13th meeting to confer with the chairman relative to securing counsel, etc.

A motion being declared out of order by the Chairman in view of the action taken by the Committee at the July 27th meeting, the Committee, on motion of E. E. Brockley, duly seconded, voted to reconsider the report adopted at that meeting.

On motion of David Keith, seconded by Claude Carter, the Committee, after discussion, voted "to elect a committee of five to secure counsel immediately and devise ways and means of securing the necessary funds". Blair Blanton and E. E. Brockley were recorded as "not voting".

Nominations and election (by secret ballot) of the committee of five followed, the result being as follows:

David Keith, 38, elected; Geo. E. Via, 38, elected; Claude Carter, 36, elected; Solomon Travis, 36, elected; I. C. Wilkins, 29, elected; C. H. Oliver, 16.

On motion of David Keith, duly seconded, the Committee voted that "authority be granted the committee of five to use any amount of the money now on deposit in the Credit Union to the credit of the Employees' Representative."

In response to an inquiry, the Chairman advised that it was the custom in some departments to hold regular shop meetings.

Adjournment followed.

I. C. WILKINS,  
Secretary.

1381

Respondent's Exhibit 9

## NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY

## EMPLOYEES BY BIRTHPLACES—SEPTEMBER 3, 1937

## NATIVE BORN—STATES

	White	Colored	Totals		White	Colored	Totals
Virginia	2,979	1,152	4,131	Connecticut	11		11
North Carolina	945	329	1,274	Maine	11		11
Pennsylvania	194	9	203	Minnesota	11		11
South Carolina	33	95	128	California	9		9
Maryland	80	4	84	Mississippi	7	1	8
New York	78	1	79	Nebbraska	6		6
Georgia	64	7	71	New Hampshire	5		5
West Virginia	55	5	60	Kansas	5		5
Ohio	34	1	35	Louisiana	5		5
Tennessee	7	5	12	Colorado	4		4
New Jersey	26	8	34	Oklahoma	4		4
Illinois	29		29	Rhode Island	4		4
Michigan	28		28	Washington	4		4
Kentucky	27		27	Arkansas	3		3
Massachusetts	26	1	27	Wisconsin	3		3
Alabama	22	3	25	South Dakota	2		2
Florida	20	4	24	Vermont	2		2
Indiana	19		19	Arizona	1		1
District of Columbia	13	4	17	Montana	1		1
Delaware	14	1	15	New Mexico	1		1
Texas	13	1	14	North Dakota	1		1
Missouri	17		17				
Iowa	12		12	Subtotal	4,843	1,612	6,455

## FOREIGN BORN—COUNTRIES

Scotland	69		69	France	3		3
England	59		59	1382 Finland	2		2
Ireland	31		31	Newfoundland	2		2
Germany	26		26	Poland	2		2
Austria	14		14	Switzerland	2		2
Russia	14		14	Africa		1	1
Denmark	9		9	Chile	1		1
Portugal	7	1	8	Cuba	1		1
Norway	7		7	Hawaii	1		1
Italy	6		6	Hungary	1		1
Canada	5		5	Philippine	1		1
Holland	5		5				
Sweden	5		5	Subtotal	278	4	282
Greece	4		4	Totals	4,821	1,616	6,437
British West Indies	1	2	3				

1383

Intervener Exhibit 2

## NOTICE

Result of Election for adoption or rejection of Representation of Employees plan.

2,430 For, 204 Against, 8 Void, Total Vote, 2,642.

Election for Nomination of Representatives will be held July 11, 1927.

1383-A

*Intervener Exhibit 3*

MINUTES OF GENERAL JOINT COMMITTEE

Thursday, May 20, 1937

The adjourned May meeting of the General Joint Committee was called to order in the Athletic Building at 4:15 P. M., Thursday, May 20, 1937, by the Chairman, Blair Blanton.

The Secretary stated that a quorum was present and the roll call was dispensed with.

The Chairman stated that the meeting was held to consider the revised Plan of Representation, as submitted by the Executive Committee together with the recommendations made by the Elected Representatives.

The Secretary then read the revised Plan with the modifications suggested by the Employee Representatives inserted, several minor alterations being made by the Committee during the reading.

The Management's Representative announced that the revised Plan had been discussed with and was acceptable to the Management.

On motion of Claude Carter, Dist. 4, seconded by Alphonso Smith, Dist. 1, the Committee by a viva-voce vote unanimously voted to "adopt the Plan as a whole as amended." No votes being cast in opposition to the plan and the number present being considerably in excess of the required two-thirds vote for revision of the bylaws, the Chairman declared the revised Plan adopted to be effective June 30, 1937. It is noted that the effective date of the revised Plan is the tenth anniversary of the Plan of Representation adopted June 30, 1927.

The Plan as adopted is filed with the Secretary as a part of the minutes of this meeting.

On motion of Claude Carter, Dist. 4, seconded by J. C. Johnson, the Committee voted to have the revised Plan printed and made available for each employee in the Yard.

Adjournment followed.

I. C. WILKINS,  
*Secretary.*

A true copy.

I. C. WILKINS.

9/8/37.



1384 *Draft as adopted by the General Joint Committee,  
May 20, 1937, to be effective as of June 30, 1937*

MAY 4, 1937.

# PRINCIPLES OF REPRESENTATION OF EMPLOYEES OF NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY

In order to assure to the employees of the Newport News Shipbuilding and Dry Dock Company full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment and other mutual aid or protection; to provide an orderly and expeditious procedure for prevention and adjustment of any differences which may arise regarding employment; and to prevent loss of time and stoppage of work while any such differences are pending, the principles of employee representation are hereby reaffirmed by the employees and the Company and to those ends the following rules are hereby adopted:

## ARTICLE I

Representation shall be on the following basis:

SEC. 1. For purpose of Representation, the Shipyard shall be divided into Districts, each composed of one or more departments. Where, in the judgment of the Executive Committee (created as hereinafter provided), the number of employees in any one department is not sufficient to warrant a representative, the Executive Committee may combine that department with one or more others of related function to form a district.

Such other adjustments as may be necessary to meet special cases shall be made by the Executive Committee.

## ARTICLE II

### Terms of Employee Representatives

SEC. 1. Representatives shall be elected for a term of one year and shall be eligible for re-election. A representative thus elected shall be called employee representative and as such shall be a member of the Employees' Representative Committee, created as hereinafter provided.

SEC. 2. A Representative may be recalled upon the approval by the Executive Committee of a petition signed by two-thirds of the voters in the group he represents.

SEC. 3. A Representative shall be deemed to have vacated his office upon severance of his relations with the Company or upon his appointment to such regular position as would place him with the rank of leading man or above, or transfer to another department.

SEC. 4. The Executive Committee shall fill vacancies either by seating the candidate receiving the next highest number of votes in

the last election, by special election, or by appointment, and its decision as to the manner of filling the vacancy shall be final.

1385

### ARTICLE III

#### Qualifications of Representatives and Voters

SEC. 1. Except as provided in Section 2 of this Article, any employee who has been on the Company's pay roll for a period of one year prior to nominations, who is twenty-one years of age or over, and who is an American-born citizen shall be considered qualified for nomination and election as a Representative.

SEC. 2. Company officials and supervisors from leading men up, or men acting in the capacity of supervisors are not eligible for election as Representatives.

SEC. 3. All employees, except Company officials and supervisors from leading men up, who have been on the Company's pay roll for a period of sixty (60) days prior to the date fixed for nominations shall be entitled to vote.

### ARTICLE IV

#### Nominations and Elections

SEC. 1. Nominations and elections shall be held annually in June.

SEC. 2. Nominations and elections shall be arranged for and conducted by the employees in accordance with rules and regulations prescribed by the Executive Committee.

SEC. 3. Nominations and elections shall be by secret ballot, and so conducted as to avoid undue influence or interference with voters in any manner whatsoever, and to assure fairness in the counting of ballots.

SEC. 4. Three persons may be nominated for every person to be elected, but any voter may place two names in nomination.

SEC. 5. Nominations of employee representatives shall be held on the second Tuesday, and elections on the following Tuesday of the month named. In event of either of these days being a holiday, the day immediately following shall be substituted. The newly-elected Representative's term of office shall begin July 1 following his election.

SEC. 6. On the day of the nomination, each duly qualified voter present and desiring to vote shall be furnished with a printed ballot on which he shall write the names of the persons he desires to nominate as Representatives. The ballot shall have printed at the top the words "Employees' Representation, Newport News Shipbuilding and Dry Dock Company," the nominations, and the date.

SEC. 7. If, on any ballot, the same name is placed in nomination more than once, it shall be counted but once.

SEC. 8. Should the number of persons nominated on any ballot exceed two, the permitted number, the ballot shall be void.

SEC. 9. The three candidates who have received the largest number of votes shall be declared nominated, and shall be candidates for election.

SEC. 10. On the day of election, each duly qualified voter shall be furnished by the Executive Committee with a printed ballot on which the names of the candidates shall be printed in alphabetical order and at the top the words "Employees' Representation, Newport News Shipbuilding and Dry Dock Company,—Election," and the date. The voter shall indicate his preference by placing a cross (X) opposite the name of the candidate of his choice.

SEC. 11. Each voter shall deposit his own ballot in the box provided for the purpose. The ballots shall be counted under the direction and supervision of the Executive Committee. The candidate receiving the highest number of votes shall be declared elected.

1386 SEC. 12. In the event of a tie, seniority in the Company's employ shall determine the choice.

SEC. 13. In the event of a controversy concerning any nomination or election, it shall be referred to and decided by the Executive Committee.

SEC. 14. The Executive Committee may make such provision as they may consider necessary for assisting any voter who may so request in filling out or marking his ballot, at any nomination or election.

SEC. 15. Immediately following the counting of ballots at any nomination and election, the Executive Committee shall seal the ballots and store them for safekeeping until it shall make and file in the permanent records of the Committee a detailed report of said nomination or election, as the case may be, which report shall show the total number of ballots printed, the total number handed out, the total number voted, and the total number of unused ballots; the names of the persons nominated or elected, as the case may be, and votes cast for each, and any other such matter as the Executive Committee may consider proper or desirable.

## ARTICLE V

### Management's Representative

The Company shall appoint a Management's Representative or Representatives. He, or they shall keep the Management in touch with the employee representatives, and represent the Management in negotiating with the employee representatives, their officers, and committees.

## ARTICLE VI

### Committees

SEC. 1. Employees' Representative Committee:

The representatives so elected shall compose the Employees' Representative Committee and shall be called together not later than

June 30, by the Secretary of the Current Employees' Representative Committee, who shall preside, or designate who shall preside during the election of a temporary chairman and secretary, to conduct the election of permanent officers.

The Committee shall then elect a chairman, vice-chairman, secretary, and an Executive Committee of not less than five (5) members.

The Committee shall set a time and place for regular monthly meetings.

The Chairman shall preside at all meetings of the Employees' Representative Committee. In the absence of the Chairman the Vice-Chairman shall preside.

The Secretary shall have charge of all books, papers, records of nominations and elections, etc., belonging to the Committee, record the minutes of all meetings, write and send notices of meetings and perform such other duties as may be assigned by the Chairman. Should both Chairman and Vice-Chairman be absent, the Secretary shall open the meeting and conduct the election of a Chairman pro tempore. At the conclusion of his term of office the Secretary shall deliver to his successor all records and other property of the Committee which may be in his possession.

Meetings of the Employees' Representative Committee shall be held monthly at such time on such date as may be selected by the Committee. (The Management's Representative, when requested, shall meet with this Committee, but have no vote.)

1387 Special meetings may be held when called by the Chairman, or upon the written request of seven representatives. Notices of special meetings must include the subject or subjects to be considered, and no other matters may be considered without the consent of two-thirds of those present.

A quorum shall be a majority of the representatives.

This Committee may take action on such matters as are presented either by representatives, sub-committees, or the Management's Representative. The action of this Committee shall be final, and become effective upon agreement by the Company.

#### SEC. 2. The Executive Committee:

The Executive Committee shall be composed of not less than five (5) representatives to be elected by the Employees' Representative Committee, and shall take final action on such matters as may be referred to it by the Employees' Representative Committee, subject, however, to the approval of the Employees' Representative Committee, and shall perform such other duties as may be imposed on it in connection with carrying out this plan of employee representation.

#### SEC. 3. Sub-Committees:

When either standing committee (Employees' Representative Committee or the Executive Committee) shall desire any matter under consideration by it referred to a sub-committee, it shall request the Chairman of the Employees' Representative Committee to appoint a sub-committee and to refer such matter to such Committee so

appointed by him. Reports and recommendations of sub-committees shall be made to the Employees' Representative Committee and shall be final if and when approved by it.

Such sub-committees shall consider only the matters for which they may be respectively appointed. No sub-committee shall be a standing committee.

#### ARTICLE VII

##### Procedure of Adjustment

SEC. 1. Any matter which in the opinion of any employee or group of employees requires adjustment, and which such employee or group of employees have been unable to adjust with the person in charge of the work on which he or they are engaged, may be taken up by such employee or group of employees through his or their representative.

First—With the Foreman or Head of the Department.

Second—With the Management's Representative.

Third—With one of the superior officers of the Company, or with the Employees' Representative Committee,

which committee shall refer the matter after discussion, to a specially appointed sub-committee which shall investigate and report not later than at the next regular monthly meeting of the Employees' Representative Committee.

SEC. 2. Unless a satisfactory disposition of any such matter has been effected, within a reasonable time, any employee or group of employees through his or their representative may require such matter to be referred to the Executive Committee by a request in writing addressed to said Committee, specifying in detail the matter requiring adjustment and the reasons which warrant its consideration by said Committee. The Executive Committee shall consider any such matter, with reasonable promptness, at a regular or special meeting, and may adopt such means as are necessary to ascertain the facts, and effect a settlement.

SEC. 3. If the Executive Committee fails to effect a settlement, the Personnel Manager or General Manager of the Company shall be notified.

1388 SEC. 4. If any issue presented by an employees' representative to the Employees' Representative Committee is referred by that body to either the Executive or a sub-committee or special committee, it shall be the duty of the representative to appear before the Committee.

#### ARTICLE VIII

##### Guaranteeing the Independence of Representatives

SEC. 1. Each representative shall be free to discharge his duties in an independent manner, without fear that his individual relations



with the Company may be affected in the least degree by any action taken by him in good faith in his representative capacity.

To insure to each representative his right to such independent action, he shall have the right to take the question of any alleged personal discrimination against him, on account of his representative capacity, to any of the superior officers of the Company and to the Employees' Representative Committee.

## ARTICLE IX

### Amendments

SEC. 1. Any article in this book may be amended at any regular meeting by a favorable vote of two-thirds of the entire membership of the Employees' Representative Committee. Such amendments shall be in effect at the time specified by the Employees' Representative Committee, unless disapproved by the Company within 15 days after their passage.

1391 BEFORE THE NATIONAL LABOR RELATIONS BOARD, FIFTH REGION

Case No. V-C-82

IN THE MATTER OF NEWPORT NEWS SHIPBUILDING & DRY DOCK COMPANY AND INDUSTRIAL UNION OF MARINE & SHIPBUILDING WORKERS OF AMERICA

### *Intermediate report.*

Upon charge duly made and acting pursuant to authority granted in Section 10 (b) of the National Labor Relations Act, approved July 5, 1935, Bennett F. Schauffler, agent of the National Labor Relations Board, acting pursuant to its Rules and Regulations—Series 1, Article IV, Section 1, issued its complaint dated June 18, 1937, against the Newport News Shipbuilding and Dry Dock Company, the respondent herein. The complaint and notice of hearing thereon were duly served upon respondent on June 18, 1937, in accordance with the said Rules and Regulations—Series 1, Article V, Section 1. Minor amendments to the complaint were made pursuant to motion at the hearing.

The complaint as amended alleged that respondent is engaged in the construction, overhaul, and repair of ships at Newport News, Virginia; that in the course of said business respondent causes a considerable portion of the raw materials used by it, and a considerable portion of the products and ships manufactured, overhauled, and repaired by it to be transported in interstate commerce; that on or about March 3, 1937, respondent discharged John M. Darling, Jr., because he attempted to form an industrial union among its employees; that it discharged on or about May 31, 1937, William H. Bell, on or about June 1, 1937, Melvin L. Anderson

and E. B. Wright, and on or about June 7, 1937, Jesse D. Dillon, because each and said employees joined and assisted a labor organization known as the Industrial Union of Marine and Shipbuilding Workers of America; that respondent since 1927 has sponsored, encouraged, dominated, and interfered with and lent financial and other support to a labor organization of its employees known as "Representation of Employees"; that the aforesaid acts of respondent constitute unfair labor practices affecting commerce within the meaning of Section 8, Subdivisions 1, 2, and 3, and Section 2, Subdivisions 6 and 7, of the Act.

Thereafter respondent filed its answer which as amended by motion made at the hearing alleged: that the principal portion of its business is the designing and building of ships, and that the overhaul and repair work which it does is a minor portion; that a considerable portion of the raw materials used by it is transported in interstate commerce, but respondent denied that a considerable portion of the products manufactured or the ships built, overhauled and repaired by it is so transported; respondent denied that the employees mentioned in the complaint were discharged for the reasons therein stated, and alleged that they were laid off because of general reductions in force and, with respect to Darling, respondent alleged that he was an undesirable employee; respondent denied the allegations in the complaint concerning the "Representation of Employees," but admitted that in cooperation with its employees it aided in putting said organization into effect in 1927, and that it lent its moral support and encouragement to the formation and continuation of said organization; respondent denied that any of its activities constituted unfair labor practices affecting commerce and alleged that its business consists principally of building vessels for the United States Navy, which vessels are not used as instrumentalities of commerce.

Prior to the hearing a motion to intervene made by the "Representation of Employees" was granted by the Regional Director of the Fifth Region.

Pursuant to the notice of hearing and notices of postponement of hearing which were duly served, the undersigned, as Trial Examiner of the National Labor Relations Board, designated to conduct hearings in this case, conducted a hearing from August 30, 1937, to September 8, 1937, at Newport News, Virginia. The Board appeared by Jacob Blum, Regional Attorney, the respondent by Fred H. Skinner, John Marshall, and Charles C. Berkeley, its attorneys, and the "Representation of Employees" (herein referred to as the "intervener") by Frank A. Kearney, its attorney. Full opportunity to be heard, to cross-examine witnesses and to produce evidence bearing upon the issues was afforded to the parties. They were granted a reasonable period for oral argument at the close of the hearing and were afforded an opportunity to file briefs. A brief has been filed on behalf of the intervener.

At the hearing motions were made to dismiss the complaint and the charge on the grounds that the Board is without jurisdiction over the respondent, that the charge was unlawfully made and executed, that the amended charge was not served with the complaint, that the charge was not drawn in accordance with the rules and regulations of the Board, and on other grounds mentioned in respondent's Exhibit 1. These motions were denied. Motions made by the respondent and the intervener to dismiss the complaint with respect to the alleged violation of Section 8, Subdivision 2, of the Act were denied. Decision was reserved on a motion by respondent to dismiss the complaint with respect to the alleged discriminatory discharges. Motions by counsel for the Board and counsel for the intervener to conform their respective pleadings to the proof were granted.

Upon the record as thus made, the stenographic report of the hearing and all the evidence, including oral testimony, documentary and other evidence received in the hearing, the undersigned makes in addition to the above the following specific finding of fact.

## FINDINGS OF FACT

### I. THE RESPONDENT

1. Respondent is and for over twenty years past has been a corporation organized under the laws of the State of Virginia. It is engaged in the design, construction, repair, and overhaul of ships for the United States Navy and of passenger and freight vessels for domestic and foreign owners. Its principal place of business, yards and dry docks, are located at Newport News, Virginia.

### II. THE UNFAIR LABOR PRACTICES

#### (a) The Union

2. The Industrial Union of Marine and Shipbuilding Workers of America, herein referred to as the Union, is an organization of workers in the shipbuilding, repairing, and marine equipment industries, existing for the purpose of improving the standard and general living conditions of the workers in said industries through organization and collective action. It is affiliated with the Committee for Industrial Organization. It has through collective bargaining entered into contracts with numerous employers in its field covering wages, hours, and conditions of employment. The Union is a labor organization within the meaning of the Act.

#### 1406 (c) The Employees' Representation Plan

25. In 1927 there was placed in operation in respondent's yard, a plan herein referred to as the Employees' Representation Plan, designated "Representation of Employees." The manner in which the plan first came into being is not shown by the record. It

was submitted to the workers for their approval and was approved by those voting by a vote of 2,430 to 204. Since 1927, the plan has been amended from time to time by vote of the representatives with the approval of the respondent, and as thus amended is now in effect. None of the changes made since 1927 has been submitted to the employees for their approval.

26. The purpose of the Employees' Representation Plan as stated in its preamble as it existed up to June 30, 1937, was as follows: "In order to give the employees of the company a voice in regard to the conditions under which they labor and to provide an orderly and expeditious procedure for prevention and adjustment of any future differences and to anticipate the problems of continuous employment, a method of representation of employees has been established."

1407 27. The original plan (Board's Exhibit 4) provided for the election by the employees of 21 white and 7 colored representatives, each racial group constituting a separate committee. These representatives were to be elected for a term of one year. Each received from the respondent compensation of \$100 per year for serving as a representative. No employee having the rank of leading man or higher was eligible to serve as a representative or to vote for representatives.

28. The original plan also provided for four joint committees, each one consisting of five elected representatives and not more than an equal number of representatives appointed by the management. These committees, whose functions may be inferred from their designations, were: (1) Rules, Ways, and Means, (2) Wage, Bonus, and Piece Work, (3) Safety, Pension, and Relief, and (4) General, Appeals, etc. A Management's Representative was provided for whose function was to "keep the management in touch with the representatives and represent the management in negotiations with their officers and committees." Procedure was provided for adjustment of "any matter which in the opinion of any employee requires adjustment," which procedure provided in its final stage for arbitration if "the President (of the company) and a majority of the employees' representatives on the Joint Committee agreed to such reference." The plan could be amended by a "two-thirds vote of the entire membership of the Joint Committee on Rules, or by concurrent majority vote of the Employees' Representatives and of the Representatives of the Management at an annual conference." The plan was revised in 1929 and 1931, and substantially as so revised (see Board's Exhibit 11) remained in effect until June 30, 1937, although minor revisions were made in 1934 and 1936. The principal changes in the plan as amended in 1931 from that which was put into effect in 1927 were (1) provision was made for the election of one white and one colored representative from each yard department and from each general and service division, and for the appointment by the management of an equal number of Management Representatives,

1408 (2) the remuneration of the representatives, still paid by the company, was reduced to \$60.00 per year, (3) nominations



and elections were to be arranged for by the Management's Representatives "but insofar as possible conducted by the employees themselves," (4) instead of four joint committees, a governing body called the General Joint Committee was provided for, composed of all elected representatives and all appointive representatives of the management, a quorum to consist of a majority of the representatives of each type, (5) the secretary of the general Joint Committee was allowed additional compensation of \$5.00 per month, paid by the company, (6) the action of the general Joint Committee was to be final when approved by the President of the company, (7) an executive committee and a subcommittee were set up, each to be composed of five elected representatives and five representatives appointed by the company, (8) the procedure for adjustment of grievances was changed materially and provided in the ultimate that "if the executive committee fails to effect a settlement the President of the company shall be notified," (9) amendments to the plan could be made by a two-thirds vote of the entire General Joint Committee when approved by the President of the company.

29. After the decision of the Supreme Court upholding the constitutionality of the National Labor Relations Act, it was decided to amend the plan "to bring it within the letter as well as the spirit of the Act." Who initiated this idea is not shown by the record. The naivete of the manner in which this result was attempted to be achieved is astounding. Instead of scrapping the plan, which as it then existed was obviously unlawful under Section 8, Subdivision 2, of the Act, advising its employees of the plan's disestablishment and permitting them to choose without interference by respondent their own type of labor organization, the plan was amended through the use of the machinery for amendment provided for in the illegal plan itself. That the plan in its present form was tainted with illegality from its very inception is clear from the testimony given by its secretary, Irving Clark Wilkins, regarding the manner in which the amendments were adopted. He stated that the following 1409 steps were taken: (1) The question of changing the plan came up before the General Joint Committee, and was referred to the Executive Committee (also a joint committee). (2) The Executive Committee considered the plan and presented the revised plan to the General Joint Committee at its next meeting. (3) The General Joint Committee then referred the plan to a meeting of the elected representatives. (4) The elected representatives suggested changes and referred the plan back to the General Joint Committee which made several modifications and finally adopted the amended plan on May 20, 1937 to take effect on June 30, 1937. Thus, the plan in its present form was born not out of the independent action of the employees or even of their elected representatives, but by the joint action of the representatives of the employees and those of the respondent. The minutes of the meeting of the General Joint Committee on May 20, 1937, state: "The Management's Representatives announced that the revised plan had been discussed and was accept-



able to the management." As a matter of fact, Robeson, the Personnel Manager, and Woodward, the General Manager, had taken an active part in the revision of the plan which the General Joint Committee finally approved.

30. Even if the amended plan were not wholly illegal by reason of the manner of its adoption, the provisions of the amended plan and its manner of operation contravened the Act. The principal changes effected in 1937 were: (1) the elimination of the Joint Committee and of Management Representatives on the Employees' Representative Committee, Executive Committee and Sub-committee, and (2) the elimination of the provision for compensation of Employees' Representatives and of the secretary. However, the plan still provides (Article VI, Section 1): "The action of this committee (Employees' Representative Committee) shall be final and become effective upon agreement by the company," and also (Article IX, Section 1): "Any article in this book may be amended at any regular meeting by a favorable vote of two-thirds of the entire membership of the Employees' Representative Committee. Such amendments shall be in effect at the time specified by the Employees'

Representative Committee, *unless disapproved by the Company within fifteen days after their passage.*" [Italics supplied.]

It is inconceivable that a plan of labor organization which cannot be changed over the objection of the employer can be deemed free of employer interference and domination within the meaning of the Act.

31. The record also shows that the revised plan was printed upon order of respondent's Material Department at respondent's expense; that it was distributed to all of the employees through the supervisors in each department; that the elections of representatives are held upon respondent's properties during the hours 12 noon and 5 P. M., which are working hours; that the minutes of each meeting of the Employees' Representative Committee are posted on respondent's Bulletin Board in the yard; that a copy of the minutes of each meeting is sent to Robeson, the Personnel Manager; that the minutes of each meeting are duplicated in respondent's correspondence office at its expense, and on stationery provided by it; that copies of the minutes are distributed to the Employee Representatives through the yard mailing system; that the clerks and judges of the elections of Employee Representatives are employees who perform their functions on company time, and that the company supplies the Employees' Representation Plan with a payroll list for use in the conduct of elections of representatives.

32. Said plan entitled "Representation of Employees" now in effect at respondent's plant is a labor organization within the meaning of the National Labor Relations Act.

33. The respondent by its officers and agents on June 1927 and down to and including the present time, formed and sponsored a plan known as the "Representation of Employees" as a labor organization within the meaning of the National Labor Relations Act.

34. The respondent is dominating and interfering with the administration of a labor organization of its employees by the acts hereinbefore set forth, and is contributing financial and other support to said labor organization.

### 1411 III. THE NATURE OF RESPONDENT'S BUSINESS

35. The following facts concerning respondent's business were either stipulated or were furnished by respondent or testified to by its witnesses: Respondent is, and for over twenty years has been, a corporation organized under the laws of Virginia. The entire plant, which is one of the principal shipyards of the United States, is located and operated at Newport News, Virginia. The business of respondent is that of designing, constructing, overhauling, and repairing ships for the United States Navy, Maritime Commission, and domestic and foreign private interests. It also builds water turbines. From August 1933, to the date of the hearing, respondent received contracts for the construction of the following vessels for the United States Navy:

Date of contract	Type	Name	Contract price	Date of delivery
August 3, 1933	Airplane carrier	Yorktown	\$19,000,000	August 16, 1937.
August 3, 1933	Airplane carrier	Enterprise	19,000,000	December 21, 1937.
August 22, 1934	Light cruiser	Boise	11,650,000	May 18, 1938.
October 16, 1935	Light cruiser	St. Louis	13,196,000	January 2, 1939.
October 12, 1936	Destroyer	Mustin	4,125,000	April 22, 1939.
October 12, 1936	Destroyer	Russell	4,125,000	June 12, 1939.
Total			71,096,000	

During the period from June 1934, to the date of the hearing, the only merchant vessels under construction at respondent's yards were three tugboats, the contracts of which were received in February and April 1937, for delivery between September 1937 and January 1938, the total contract price being \$1,020,000. Between July 1935 and August 1937, both dates inclusive, a total of 322 vessels were repaired or overhauled in respondent's yards as follows:

July to December, 1935	61 vessels
January to December, 1936	120 vessels
January to August, 1937	141 vessels

These vessels were tankers, freighters, tugs, freight-passenger vessels, barges, ferries, car floats, scows, and two or three yachts and passenger vessels. While preponderantly of domestic registry, including a considerable number of the United States Maritime Commission, a number of the vessels were of foreign registry, including British, 1412 Norwegian, Swedish, German, Greek, and Brazilian. The billing price of the repair work done in the first eight months of 1937 was approximately \$1,400,000.

36. The principal raw materials used by respondent are steel, lumber, and coal which respondent purchased in the following amounts in the years 1936 and 1937: In 1936, steel valued at \$2,049,000, all of

which was purchased, transported, and delivered from points outside the State of Virginia; in the first eight months of 1937, steel valued at \$805,000 all of which came from similar sources. In 1936, lumber valued at \$121,000 of which \$93,000 represented purchases made from sources outside the State of Virginia; in the first eight months of 1937, out of a total of \$122,000 worth of lumber, \$102,000 represented purchases from sources outside the State of Virginia. In 1936, respondent purchased \$99,000 worth of coal and in the first eight months of 1937, \$74,000 worth of coal all of which was purchased and transported to respondent from points outside of the State of Virginia. The value of all materials purchased by respondent in 1936 was about \$7,500,000, and in the first seven months of 1937 about \$5,000,000. On January 4, 1937, respondent employed about 8,300 men in its yards; on April 23, 1937, about 6,700 men; on September 3, 1937, about 6,400 men. Its total payroll in 1936 was about \$11,500,000, and in the first seven months of 1937 about \$7,100,000. It appears that the same workers are used on both construction and repair work as the situation may require.

37. All vessels built, overhauled and repaired by respondent are delivered to the owners at Newport News, except that those built for the United States Navy are transported over navigable waters and delivered at the United States Navy Yard at Norfolk, Virginia. Although the water turbines manufactured by respondent are generally delivered at Newport News, respondent sometimes makes delivery by rail or water outside the State of Virginia. It is the practice in the case of vessels built for the United States Navy for respondent to take such vessels on trial trips with crews made up of

its own employees over navigable waters both within and outside the State of Virginia.

1413 In building vessels for the United States Navy, the respondent finds it necessary to send a considerable quantity of the piping used in said vessels to the Manhattan Rubber Company in New York City where it is rubberized and returned to the yard for installation in the vessels. This was done in the cases of the "Yorktown," the "Enterprise," the "Boise," and the "St. Louis," and up to the time of the hearing sufficient plans had not come through on the two destroyers to determine whether the rubberizing processes would be required upon them:

38. In addition to the foregoing admitted facts which are deemed sufficient for the purpose of this report, the record contains a mass of additional evidence (Board's Exhibits 3 to 7, inclusive) which further illuminates the nature of respondent's business, operations, and the effect thereon of labor disputes.

39. The activities of respondent set forth in Section II above, occurring in connection with the operations of respondent as set forth in this Section have a close, intimate and substantial relation to trade, traffic, and commerce among the several states and foreign countries and have led and tend to lead to labor disputes burdening commerce and the free flow of commerce.

## CONCLUSIONS AND RECOMMENDATIONS

Upon the basis of the foregoing findings of fact, the undersigned hereby determines and concludes:

1. The respondent, Newport News Shipbuilding and Dry Dock Company, by laying off and refusing to employ William H. Bell, on May 31, 1937, Melvin L. Anderson and E. B. Wright on June 1, 1937, and Jesse D. Dillon on June 7, 1937, and thus discouraging membership in the labor organization known as the Industrial Union of Marine and Shipbuilding Workers of America, and by dominating and interfering with a labor organization, namely, the plan known as "Representation of Employees," and by contributing financial and other support to it, and by interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act as set forth in the above 1414 findings of fact, has engaged and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8 (1), and Section 2 (6) and (7) of the National Labor Relations Act.

2. Respondent by dominating and interfering with a labor organization, namely, the plan known as "Representation of Employees," and by contributing financial and other support to it, has engaged and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8 (2) and Section 2 (6) and (7) of the National Labor Relations Act.

3. Respondent by laying off and refusing to employ said William H. Bell on May 31, 1937, Melvin L. Anderson and E. B. Wright on June 1, 1937, and Jesse D. Dillon June 7, 1937, as set forth in the above findings of fact has engaged and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8 (3) and Section 2 (6) and (7) of the National Labor Relations Act.

Wherefore, the undersigned recommends that:

1. Respondent cease and desist from interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining, or other mutual aid or protection.

2. Respondent cease and desist from in any manner dominating and interfering with the formation or administration of the plan known as the "Representation of Employees" or any other labor organization of its employees and from contributing financial or other support to said plan known as "Representation of Employees" or any other labor organization of its employees.

3. Respondent cease and desist from in any manner discouraging membership in the Industrial Union of Marine and Shipbuilding Workers of America or any other labor organization of its employees

by discrimination in regard to hire or tenure of employment or any term or condition of employment or by threats of such discrimination.

4. So much of the complaint as relates to the discharge of 1415 John M. Darling, Jr., on March 3, 1937, be dismissed.

5. In order to effectuate the policies of the Act, respondent take the following affirmative action:

(a) Offer to William H. Bell, Melvin L. Anderson, E. B. Wright, and Jesse D. Dillon, immediate and full reinstatement to their former positions without prejudice to their seniority and the rights and privileges previously enjoyed by each of said individuals with regard to their respective positions.

(b) Make whole the said William H. Bell, Melvin L. Anderson, E. B. Wright, and Jesse D. Dillon for any loss of pay they have suffered by reason of their having been laid off as above described, by payment respectively of a sum of money equal to that which each would normally have earned as wages during the period from the date of his layoff to the date of his reinstatement, less the amount which each earned during that period.

(c) Withdraw all recognition from said plan known as "Representation of Employees" and disestablish said organization as representative of its employees, for the purpose of dealing with respondent concerning grievances, labor disputes, rates of pay, wages, hours of employment, or other conditions of employment.

(d) Post notices in conspicuous places in its plant at Newport News, Virginia, stating (1) that respondents will cease and desist as aforesaid, (2) that its employees are free to join or assist the Industrial Union of Marine and Shipbuilding Workers of America, or any other labor organization, of their own choosing, and (3) that the labor organization known as "Representation of Employees" is so disestablished and that respondent will refrain from any recognition thereof and (4) that such notices will remain posted for a period of at least thirty consecutive days from the date of the commencement of such posting.

(e) File with the Regional Director of the Fifth Region within ten days of the date of this report, a report in writing setting forth in detail the manner and form in which respondent has complied with the foregoing requirements.

1416 It is further recommended that unless within said ten-day period, respondent notifies the said Regional Director in writing that it will comply with the foregoing recommendations, the matter be referred forthwith to the National Labor Relations Board, and that said Board issue an order requiring the respondent to take the action aforesaid.

Dated, March 9th, 1938.

JAMES C. PARADISE,  
James C. Paradise,  
Trial Examiner.



1423

BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FIFTH REGION

[Title omitted.]

*Exceptions of Newport News Shipbuilding and Dry Dock Company to the record and to the intermediate report of the trial examiner*

Pursuant to the National Labor Relations Act, approved July 5, 1935, and the Rules and Regulations of the Board, Series 1, as amended, the Newport News Shipbuilding and Dry Dock Company, hereinafter sometimes referred to as the Respondent or Shipyard, without waiving any motion, objection, or exception heretofore made or taken to the pleadings or at the hearing in this case, but expressly reserving and relying on each and every such motion, objection, and exception, here excepts to the intermediate report made in this case by Trial Examiner James C. Paradise, dated March 9, 1938, and served on the respondent March 10, 1938, the said exceptions being as follows:

1432 32. To all of finding of fact No. 29 with the exception of the first sentence thereof, on the ground that said finding of fact is not supported by evidence and is refuted by the evidence in and the record of these proceedings.

33. To so much of finding of fact No. 30 as states that "Even if the amended plan were not wholly illegal by reason of the manner of its adoption, the provisions of the amended plan and its manner of operation contravened the Act," and to the further part of said finding of fact No. 30 as states that "It is inconceivable that a plan of labor organization which cannot be changed over the objection of the employer can be deemed free of employer interference and domination within the meaning of the Act," on the ground that there is no such provision in said plan and on the ground that said findings of fact are not supported by evidence and are refuted by the evidence in and the record of these proceedings.

34. To finding of fact No. 33 that the respondent by its officers and agents on June 1927, and down to and including the time of his report, formed and sponsored a plan known as the "Representation of Employees" as a labor organization within the meaning of the National Labor Relations Act, on the ground that such finding is not supported by evidence and is refuted by the evidence in and the record of these proceedings.

35. To finding of fact No. 34 that the respondent is dominating and interfering with the administration of a labor organization of its employees, and is contributing financial and other support  
1433 to said labor organization, on the ground that such finding is not supported by evidence and is refuted by the evidence in and the record of these proceedings.

36. To that part of finding of fact No. 37 as states that "In building vessels for the United States Navy, the respondent finds it necessary to send a considerable quantity of the piping used in said vessels to the Manhattan Rubber Company in New York City where it is rubberized and returned to the yard for installation in the vessels," on the ground that the evidence shows that the actions referred to are isolated instances, are not customary practice and that said finding of fact is not supported by evidence and is refuted by the evidence in and the record of these proceedings.

37. To all of finding of fact No. 38 on the ground that Board's Exhibits 3 to 7, inclusive, therein referred to, are self-serving material prepared by or at the instance of the National Labor Relations Board, are irrelevant and immaterial to any issue involved in these proceedings and no opportunity was afforded respondent to cross-examine those who compiled the data contained in said exhibits.

38. To finding of fact No. 39 that the activities of respondent as set forth in Section II of the Intermediate Report, occurring in connection with the operations of respondent as set forth in Section III of said report have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and foreign countries and have led and tend to lead to labor disputes, burdening commerce and the free flow of commerce, on the ground that such finding is not supported by evidence, is refuted by the evidence in and the record of these proceedings and is contrary to law.

#### As to the Examiner's Conclusions and Recommendations

39. The respondent excepts to each and every of the Trial Examiner's conclusions and recommendations and the affirmative action taken by him thereon and on the record appearing on pages 23, 1434 24, 25, and 26 of said report, on the ground that said conclusions, recommendations, and affirmative actions, and each and every of them, are contrary to the evidence and without evidence to support them, or any of them, and or not, nor are any of them, supported by law or findings or conclusions arrived at in accordance with the requirements of due process of law.

Respondent Also Excepts to Each and Every of the Rulings of the Trial Examiner Upon the Motions of the Respondent in the Hearing, and particularly as to the following:

40. To the ruling refusing to sustain respondent's motion to dismiss the charge and complaint on the ground that the charge made and relied upon in this proceeding was not properly verified or sworn to in accordance with the intent and requirement of the rules and regulations of the Board, and particularly with Section 3 of Article 2 of said rules and regulations.

41. To the ruling refusing to sustain respondent's motion to dismiss the proceedings as to Jesse D. Dillon on the ground that no copy of any charge made in accordance with Sections 4 and 5 of Article 2 of the rules and regulations of the Board as to the alleged

discharge of the said Jesse D. Dillon was attached to the complaint, or any amendment thereof, and served on the respondent as required by said rules and regulations.

42. To the ruling of the said Trial Examiner in accepting as evidence Board's exhibits Nos. 3 to 7, inclusive, on the ground that said exhibits are improper, immaterial, incompetent, and irrelevant, no opportunity was afforded respondent to cross-examine the persons who compiled the documents, the same are self-serving and reasonable opportunity was not afforded respondent to examine said exhibits, or any of them. (Record, pages 35-38.)

43. To the ruling refusing to sustain respondent's two motions to strike out the testimony of William H. Bell with respect to an alleged telephone conversation between respondent and the employment manager of the Amphill Plant of the DuPont Company which the said Bell testified he overheard in part, on the ground that such testimony was hearsay, incredible, unworthy of belief, entitled to receive no consideration or weight in the hearing, and conclusively refuted by the evidence for the reason that:

(a) Bell himself testified he only heard a part of the alleged conversation and that he did not know who was speaking from the Newport News end of the telephone.

(b) It is incredible to believe that Bell could have gotten up and walked over to a position in back of the employment manager, put his hand on the employment manager's shoulder, gotten so close to the employment manager as to be able to overhear any part of the phone conversation, and the employment manager still be unaware of his (Bell's) proximity.

(c) There is no evidence as to who the person talking from the other end of the line was, or as to what, if any, position he held with the respondent and there is testimony of responsible officials of respondent as well as of the Manager of the Telephone Company, himself a disinterested witness, that there was no such telephone call from respondent.

(d) It is an uncontradicted fact that Anderson and Wright, two of the three men alleged to have been referred to as "agitators" in the telephone conversation, were working in the Amphill Plant of the DuPont Company at the time of the alleged conversation and continued working there subsequent to the said telephone conversation; that Dillon, the other man alleged to have been referred to in the said telephone conversation as an "agitator" had, previous to the said alleged telephone conversation and subsequent to the time he was laid off by the respondent, been recommended by the respondent's telegram for employment by the said Amphill Plant and that he was then and thereafter employed by said Company at Amphill.

(e) It is an uncontradicted fact that the acting manager of the Newport News office of the Chesapeake and Potomac Telephone Company, an entirely disinterested, unprejudiced, and impartial witness.

# MICRO CARD

TRADE MARK 

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1436 in the case, had, a few minutes previous to his testifying, completed a detailed examination of the records contained in the Newport News office of the Telephone Company, showing all telephone calls made from respondent's plant from May 1, 1937, to August 21, 1937, which examination, of course, included the date Bell testified the telephone conversation took place. The records of the Newport News office of the Telephone Company would, of necessity, show any and all telephone calls made by the respondent from its plant in Newport News to the Ampthill Plant of the DuPont Company. Particular effort was always taken to keep correct records in the telephone office and from past experience the manager of the Telephone Company felt certain they were accurate, and that from such examination he found the records in the office disclosed that the respondent had made no telephone call to the Ampthill Plant of the DuPont Company either on the day Bell testified he overheard the telephone conversation or during the period for which he examined the records, which included several weeks prior and subsequent to the date Bell testified the alleged telephone conversation took place, and

(f) The record discloses that Bell's testimony as a whole was not worthy of belief.

Attention of the Board is particularly called to page 924 of the Record wherein respondent offered to obtain permission of the Telephone Company for the Trial Examiner and the Board's attorney to examine these records. This office was only a very few blocks from the place of the hearing. The original records of the Telephone Company were readily available to the Trial Examiner but not to respondent. It is noteworthy that the Board's attorney and the Trial Examiner disagreed as to the probative value of these records; the attorney thought they were the best evidence; the Trial Examiner disagreed.

It would seem from the report of the Trial Examiner that he attaches importance to the fact that Adams, whom the Trial Examiner described as being respondent's employment manager, although this is not a fact, was not called to testify. Adams was available as 1437 a witness for the Board, as well as for the respondent. In view of the testimony of Robeson, respondent's personnel manager, in whose office Adams works, and the testimony of the telephone manager, the respondent considered and now considers that it had completely refuted any probative value that might fairly be given to Bell's testimony and for that reason did not deem it necessary to produce Adams as a witness, but if there is any inclination on the part of the Board to attach any importance to the fact that he was not called at a witness, respondent requests that the Board take his testimony at this time.

44. To the ruling permitting evidence as to any facts, acts, circumstances, policies, or any other thing connected with or pertaining



to the plan known as the "Representation of Employees," or to any relationship between it and this respondent, which took place or existed prior to July 5, 1935, the date the National Labor Relations Act became law, on the ground that such evidence is improper, immaterial and irrelevant.

45. To the ruling refusing to permit the taking of the deposition of William J. Cannon, a material witness, at the time ill in the hospital as the result of a serious operation for double strangulated hernia, on the ground that such ruling was an abuse of discretion, prejudicial to respondent and improper.

46. To the ruling sustaining the motion of the attorney for the Board to make the Board's pleadings conform to the evidence, on the grounds appearing in the record and on the further ground that the Board's attorney did not specify or in anywise indicate what changes, if any, would thereby be made in said pleadings and that neither the respondent, the Board nor the Trial Examiner would or could know the effect of such motion.

47. To the ruling refusing to sustain respondent's motions to dismiss the complaint as to said Anderson, Wright, Bell, and Dillon, on the ground that there was not sufficient evidence to substantiate the charge and/or complaint as to them, or either of them.

48. To the overruling of respondent's several motions 1438 to dismiss the charge and complaint on the ground that by reason of the local nature of respondent's business it is not engaged in commerce or in a business affecting commerce within the meaning of the National Labor Relations Act, and the National Labor Relations Board has no jurisdiction of respondent or of respondent's relations with its employees.

Respondent Also Excepts to the Failure, Refusal, and/or Omission of the Trial Examiner to Find and Report That:

49. Respondent is not engaged in commerce or in a business affecting commerce within the meaning of the National Labor Relations Act and that for said reasons the National Labor Relations Board is without jurisdiction to entertain, hear, or adjudicate the matters and things complained of, described, or set out in the charge and complaint on which these proceedings are founded.

50. The amended complaint (as amended on motion of the Board) should be dismissed as to Jesse D. Dillon, on the ground that said complaint as so amended eliminated the said Dillon from the case.

51. To the studied intention of the Trial Examiner, as exemplified by his acts and rulings throughout the hearing, as well as by the argumentative nature of his intermediate report, to make a finding adverse to respondent.

52. For the reasons stated in the record, respondent excepts to the Trial Examiner's failure to dismiss the charge and complaint on which these proceedings were instituted on the ground that no violation of the National Labor Relations Act has been proven.

## IN THE MATTER OF NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY AND INDUSTRIAL UNION OF MARINE AND SHIPBUILDING WORKERS OF AMERICA

Case No. C-470—Decided August 9, 1938

Shipbuilding Industry—Interference, Restraint, or Coercion—Employee Representation Plan: form and operation; order disestablishing—Discrimination: charges of, not sustained.

Mr. Jacob Blum, for the Board.

Mr. Fred H. Skinner, Mr. John Marshall, and Mr. Charles C. Berkeley, of Newport News, Va., for the respondent.

Mr. M. H. Goldstein, of Philadelphia, Pa., for the Union.

Mr. Frank A. Kearney, of Phoebus, Va., for the Committee.

Mr. Herbert Fuchs, of counsel to the Board.

*Decision and order**Statement of the case*

Upon charges duly filed by Industrial Union of Marine and Shipbuilding Workers of America, herein called the Union, the National Labor Relations Board, herein called the Board, by Bennet F. Schauffler, Regional Director for the Fifth Region (Baltimore, Maryland), issued its complaint dated June 18, 1937, against Newport News Shipbuilding and Dry Dock Company, Newport News, Virginia, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. In respect of the unfair labor practices, the complaint, as amended, alleged in substance that the respondent discharged John M. Darling, Jr., from its employ, for the reason that he attempted to form an industrial union among the respondent's employees; and discharged William H. Bell,<sup>1</sup> Melvin L. Anderson,<sup>2</sup> E. B. Wright, and Jesse Dillon, for the reason that they joined and assisted the Union. It further alleged that the respondent had dominated, supported, and interfered with the formation and administration of Employees Representative Committee of the Newport News Shipbuilding and Dry Dock Company, sometimes referred to as Representation of Employees, a labor organization, herein called the Committee. Copies of the complaint and accompanying notice of hearing were duly served upon the respondent and upon the Union.

<sup>1</sup> Referred to in the complaint as W. H. Bell.

<sup>2</sup> Referred to in the complaint as M. L. Anderson.

The respondent filed an answer<sup>\*</sup> objecting to the Board's jurisdiction of the subject matter and denying the allegations of unfair labor practices charged.

The Committee filed a motion for leave to intervene and an answer denying the allegations of the complaint. The motion for leave to intervene was granted by the Regional Director.

Pursuant to notice, a hearing was held at Newport News, Virginia, from August 30 to September 8, 1937, before James C. Paradise, the Trial Examiner duly designated by the Board. The Board, the respondent, and the Committee were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. The Committee filed a brief. Numerous motions and objections to the admission of evidence were made and ruled upon at the hearing. The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On March 9, 1938, the Trial Examiner filed his Intermediate Report. He found that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the Act. He recommended that the respondent cease and desist from the unfair labor practices so found; disestablish and withdraw recognition from the Committee as the collective bargaining agent of its employees; and reinstate Bell, Anderson, Wright, and Dillon to their former positions with back pay. He also recommended that the complaint as amended be dismissed in so far as it alleged the discriminatory discharge of Darling.

Exceptions to the Intermediate Report were thereafter filed by the respondent and by the Committee. Pursuant to notice, a hearing was held before the Board at Washington, D. C., on May 11, 1938, for the purpose of oral argument. The respondent, the Committee, and the Union were represented by counsel and participated in the argument. The respondent filed a brief.

The Board has fully considered the exceptions to the Intermediate Report, and, in so far as they are inconsistent with the findings, conclusions, and order set forth below, finds no merit in them.

Counsel for the Committee filed with the Board certain data purporting to show the results of a referendum and of an election of representatives conducted among the respondent's employees during June 1938. By letter dated July 25, 1938, counsel requested that these data be made part of the record in the case. The request is

<sup>\*</sup>On June 25, 1937, before answering the complaint, the respondent filed a bill of complaint in the United States District Court for the Eastern District of Virginia seeking to enjoin the Regional Director, the Regional attorney for the 5th Region, and the Trial Examiner from proceeding in this case. The District Court dismissed the bill. On January 31, 1938, the United States Supreme Court (303 U. S. 54) affirmed a decree of the Circuit Court of Appeals for the Fourth Circuit (91 F. (2d) 739) which had affirmed the decree of the District Court.

improperly made under the board's rules governing motions,<sup>4</sup> and the data sought to be made part of the record is immaterial to the determination of the issues. The request is accordingly denied.

Upon the entire record in the case, the Board makes the following:

### *Findings of fact*

#### I. THE BUSINESS OF THE RESPONDENT

The respondent is a Virginia corporation owning and operating a shipyard in Newport News, Virginia. It is engaged in the business of designing, constructing, overhauling, and repairing ships for the United States Navy and for private interests, foreign and domestic. It also builds water turbines.

The aggregate cost of materials purchased by the respondent for use in its business approximated \$7,500,000 in 1936, and \$5,500,000 in the first eight months of 1937. Principal among the materials are steel, lumber, and coal. The cost of materials purchased during the periods mentioned, and the amount and percentage of such cost allocable to materials shipped to the yard from points of origin within and without the State of Virginia, respectively, are shown in the following tables:

1936

	Total purchases	In Virginia		Outside Virginia	
	Dollars	Dollars	Percent of total	Dollars	Percent of total
Steel	2,049,000.00		0.0	2,049,000.00	100.0
Lumber	121,000.00	28,000.00	23.1	93,000.00	76.9
Coal	99,000.00		0.0	99,000.00	100.0
Other materials	5,210,418.00	787,423.54	15.1	4,422,994.46	84.9
Total	7,479,418.00	815,423.54	10.9	6,663,994.46	89.1

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1937 (JANUARY TO AUGUST, INCL.)

	Total purchases	In Virginia		Outside Virginia	
	Dollars	Dollars	Percent of total	Dollars	Percent of total
Steel	805,000.00		0.0	805,000.00	100.0
Lumber	122,000.00	29,000.00	16.4	102,000.00	83.6
Coal	74,000.00		0.0	74,000.00	100.0
Other materials	4,569,240.00	474,351.33	10.3	4,118,888.67	89.7
Total	5,594,240.00	494,351.33	8.8	5,099,888.67	91.2

The greater part of the respondent's production consists of ships built for the United States Navy. Between August 1933 and Octo-

<sup>4</sup> Article II, Section 14, of National Labor Relations Board Rules and Regulations—Series 1, as amended.

ber 1936, the respondent received contracts from the Navy Department for the construction of two airplane carriers, two light cruisers, and two destroyers at prices aggregating \$71,096,000. The delivery dates under the contracts range from August 1937 to June 1939. It is the respondent's practice, in the case of vessels built for the Navy, to take such vessels on trial trips with crews made up of its own employees over navigable waters both within and without the territorial limits of the State of Virginia. In building the two airplane carriers and the two light cruisers, the respondent sent quantities of piping from its yard to New York City to be rubberized prior to installation at the yard.

Two tug boats and a tank barge at contract prices aggregating \$1,020,000, were the only merchant vessels under construction at the respondent's yard between June 1934 and the time of the hearing. Since the close of the hearing these three vessels have been delivered to and placed in operation by their owners.

Between July 1, 1935, and August 31, 1937, 322 vessels were overhauled or repaired at the respondent's yard for an aggregate billing price in excess of \$3,000,000. The number of vessels of foreign and of domestic registry overhauled or repaired by the respondent in each calendar-year period within the period above stated is:

	Total number of vessels	Registry	
		Foreign	Domestic
July to December 1935.....	61	3	58
January to December 1936.....	120	20	100
January to August 1937.....	141	20	121
Total.....	322	43	279

The vessels of foreign registry comprise 37 freighters and 6 tankers. The billing price for their overhaul and repair exceeded \$375,000. The vessels of domestic registry comprise 150 freighters, 53 tankers, 30 passenger-freight vessels, 11 tugs, 10 ferries, 7 car-floats, 7 barges, 7 yachts, 3 passenger vessels, and 1 dredge. The billing price for their overhaul and repair exceeded \$2,625,000.

All the vessels of foreign registry and a substantial number of the vessels of domestic registry overhauled or repaired by the respondent are engaged in interstate commerce, or in commerce between the United States and foreign countries, or in both.

The respondent's yard is one of the most important in the United States. At the time of the hearing, it employed 5,500 persons.

There is no doubt that the operations of the respondent affect trade, traffic, and commerce among the several States, and between the States and foreign countries.



## II. THE LABOR ORGANIZATIONS INVOLVED

Industrial Union of Marine and Shipbuilding Workers of America is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership workers employed in the shipbuilding, ship repairing, and marine equipment industries.

Employees Representative Committee of the Newport News Shipbuilding and Dry Dock Company, sometimes called Representation of Employees, is an unaffiliated labor organization. Participation in its affairs is open to all employees of the respondent who have been on the pay roll for 60 days or longer, except those in official or supervisory positions.

## III. THE UNFAIR LABOR PRACTICES

## A. Domination of the Committee

In 1927, in cooperation with its employees, the respondent put into effect at the shipyard a plan of employee representation known as Representation of Employees. The purposes of the plan were stated in its preamble as follows:

"In order to give the employees of the Company a voice in regard to the conditions under which they labor, and to provide an orderly and expeditious procedure for the prevention and adjustment of any future differences, and to anticipate the problem of continuous employment, a method of representation of employees is to be established."

Provision was made for the election, annually, by the employees of 21 white and 7 colored representatives. The elected representatives each were paid \$100 per year by the respondent for serving in that capacity. Persons holding supervisory positions were ineligible to serve as representatives or to vote for representatives.

1460 The administration of the plan was vested in four joint committees, consisting respectively of five of the elected representatives and not more than an equal number of representatives chosen from among the employees by the management. The plan provided, in addition, for a so-called Management's Representative whose function it was "to keep the management in touch with the representatives and represent the management in negotiations with their officers and committees." A provision calling for the arbitration of differences became operative only upon concurrence of the respondent's president. Amendment of the plan required the affirmative vote of two-thirds of the full membership of one of the joint committees, namely, the Committee on Rules (which included representatives appointed by the management), or of a majority of all the employees' representatives and representatives of management at an annual conference. The independence of action of elected representatives was "guaranteed" by permitting them to take questions of discrimination "to any of the Superior Officers, to the Joint Com-

mittee and to the President of the Company." The plan contained no provision for the payment of dues.

The original plan was revised in 1929, 1931, 1934, 1936, and, finally, in 1937. The 1931 revision, which remained in effect without material change until 1937, differed from the first plan in the following respects: One white and one colored employee representative were elected by the employees in each department and division, and the respondent appointed an equal number of management representatives. The annual remuneration paid elected representatives by the respondent was reduced to \$60. Instead of four governing joint committees a General Joint Committee was set up to administer the plan, composed of all elected representatives and all representatives of management, a majority of each class of representatives constituting a quorum. The secretary of the General Joint Committee was paid \$5 monthly by the respondent. An executive committee also was established, comprising five elected employee representatives and five representatives of management. Elections were arranged for by the management representatives "but insofar as possible conducted by the employees themselves." Procedure was established for the adjustment of individual employee grievances. It provided that in the event of failure of settlement the respondent's president be notified. Under the plan, the General Joint Committee met monthly to take action upon matters presented by the Management Representative or by employee representatives or subcommittees, but finality of the action of the General Joint Committee was made dependent upon approval by the respondent's president. So, too, amendment of the plan, which could be accomplished by a two-thirds vote of the entire General Joint Committee, became effective "when approved by the President of the Company."

Manifestly, from the plan's inception in 1927 until its final revision in 1937, the respondent dominated, assisted, and interfered with the administration of the labor organization whose structure is set forth in the plan, in its revised as well as in its original form.

The plan's final revision occurred in May 1937, after the Supreme Court of the United States upheld the constitutionality of the Act. It originated in the General Joint Committee one-half of whose members, as indicated above, represented the interests of the respondent. It was referred for suggestions to the similarly constituted executive committee and to the elected employee representatives separately. On May 20, 1937, after the Management's Representative announced that the revision was acceptable to the respondent, it was adopted by the General Joint Committee, to take effect June 30. Robeson, the personnel manager, and Woodward, the general manager of the respondent, took an active part in the revision of the plan.

The Secretary of the Committee, Irving Clark Wilkins, testified that this change was undertaken in order to bring the plan "within the letter as well as within the spirit of the Wagner Act." In the light of this avowed purpose, the method by which the revision was effectuated is surprising. It is apparent that the procedure which

was followed was that of amendment under the existing plan, a procedure which required the consent of the respondent and which rendered revision by independent action of the employees and their elected representatives, or by either, free from domination and interference by the respondent, impossible.

The provisions of the plan as revised, no less than the manner of its revision, indicate that it is still the creature of the respondent. The two principal changes were the elimination of compensation paid to elected representatives by the respondent, and the substitution for the General Joint Committee and the joint executive committee of a single Employees' Representative Committee (the intervenor herein), composed solely of employee representatives elected by the employees. The plan provides, however, that the action of the Employees' Representative Committee "shall be final, and become effective upon agreement by the company" (Article VI), and that any article in the plan may be amended by a vote of two-thirds of the entire membership of the Committee, which "amendments shall be in effect at the time specified by the Employees' Representative Committee, unless disapproved by the company within 15 days after their passage" (Article IX). The plan contemplates a grievance procedure concluding with presentation of the grievance to the respondent's personnel manager or its general manager in the event no settlement has theretofore been effected.

It is too well settled to require discussion that a labor organization whose character and structure have been determined by an employer, if only to the extent that the respondent has been shown to have participated in the 1937 revision, which is incapable of taking action without agreement by the employer, and is unable to change its scheme and manner of representation over the employer's objection, is employer-dominated and interfered with within the meaning of the Act.<sup>5</sup>

The respondent and the Committee contend that the plan, in addition to providing bylaws for the government of the Committee, constitutes a contract, binding upon the respondent. In its brief, the respondent argues that the requirements of the plan rendering action by the Committee subject to the respondent's agreement (Article VI) and amendments subject to its veto power (Article IX) apply only to matters affecting the respondent's rights under the alleged contract and can not affect independent action or amendment which concerns the Committee alone. This argument is more ingenious than real. The plan is unsigned and contains no provision for signature. With a single immaterial exception,<sup>6</sup> nothing in the plan obligates the respondent in any way to act or to refrain from acting. The respondent is left free to determine, in every instance, whether a pro-

<sup>5</sup> Board's Exhibit No. 1 K.

<sup>6</sup> National Labor Relation Board v. Pennsylvania Greyhound Lines, Inc., et al., 303 U. S. 261.

<sup>7</sup> "The Company shall appoint a Management's Representative or Representatives. He or they, shall keep the Management in touch with the Employee Representatives, and represent the Management in negotiating with the Employee Representatives, their Officers, and Committees." (Article V.)

posed action of the Committee or any amendment of the plan in view of its effect upon the respondent's interest, if any, may be executed.<sup>a</sup> In short, the respondent's power under the plan to stifle independent action of the Committee is complete.

As revised May 20, 1937, the plan has been in operation at the respondent's shipyard since June 30, 1937. The revised plan was printed in booklet form at the respondent's expense and distributed by the supervisors in each department. Copies of the minutes of each meeting held by the Committee are duplicated at the respondent's expense on stationery provided by it and are distributed to the representatives through the yard mailing service. One such copy is regularly sent to the respondent's personnel manager, and one is posted on the respondent's bulletin board in the shipyard.

We find that the respondent has dominated and interfered with the formation and administration of the Employees' Representative Committee of the Newport News Shipbuilding and Dry Dock Company, sometimes called Representation of Employees, and has contributed support to it, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act. We find, further, that the Committee is incapable of serving the respondent's employees as their genuine representative for the purposes of collective bargaining.

## B. The discharges

### 1. Darling

John M. Darling, Jr., started to work for the respondent in September 1935 as an air-hose inspector earning 54 cents per hour. Shortly afterwards his hourly rate was increased to 60 cents. He was discharged on March 3, 1937. The respondent denies that it discharged Darling because he attempted to form an industrial union or otherwise advocated industrial unionism among its employees. It contends that Darling was discharged because his "demeanor, conduct, and manner of work made him an undesirable employee."

Prior to the discharge there was no active local of the Union at the respondent's yard. Darling testified that he talked to his co-workers in favor of industrial unionism, sounding out sentiment among them. He stated, also, that in his spare time, from December 1936 to February 1937, he had assisted a strike of the seamen along the Newport News water front, a strike, however, in which the respondent was not involved. The evidence of Darling's organizing activities before his discharge is meagre and vague, and there is no proof that the respondent was aware of them when it discharged him.

The testimony of a number of witnesses with whom he had worked indicates that Darling, although intelligent and capable, was on occasion a difficult co-worker and subordinate, given to argument

<sup>a</sup> Cf. National Labor Relations Board v. American Potash and Chemical Corporation, etc., 9th Circuit, — Fed. (2d) —, decided June 27, 1938.



with his fellows and superiors. He became involved in a number of disputes concerning the manner in which work should be done. It is not shown that these disputes arose out of discussions concerning labor organizations or related subjects.

A month before his discharge Darling was warned that he would lose his job if he did not get along better with the men. A few weeks later he had another quarrel with a fellow employee.

Darling's termination slip stated that he was laid off for lack of work. Dissatisfied with this explanation, he demanded the real reason from Robeson, the personnel manager. Robeson wrote "not suitable for our work" on Darling's termination slip and stated that he considered Darling "destructive."

We are of the opinion that the evidence does not support the complaint that the respondent discharged Darling for advocating industrial unionism among its employees.

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2. Bell, Anderson, Wright, and Dillon

Immediately after his discharge Darling became a paid organizer for the Union. During the same month, March 1937, William H. Bell, Melvin L. Anderson, and E. B. Wright, three first-class electricians with years of service in the electrical department, and Jess Dillon, a pipe fitter who had worked in the plumbing department for about a year, joined the Union. With a few other men they made up its organizing committee and actively solicited members. Each Monday, the Shipyard Worker, a publication of the Union, was distributed at the yard. Supervisory employees of the respondent were aware of the circulation of this paper. Bell was laid off on May 31, Anderson and Wright on June 1, and Dillon on June 3. The respondent denies that it discharged them for union activities and alleges that they were laid off in pursuance of a general reduction of force necessitated by lack of work.

Shortly before the dismissals, a number of supervisory employees made antiunion remarks to and inquiries of Bell, Anderson, and Dillon indicating undue interest in union organization. Anderson and Bell, separately, were warned by Cannon, a "quartermaster" in the electrical department, and Anderson's immediate superior, to desist from their union activities. Rhinesmith, another quartermaster in the electrical department, was heard to say, "It looks like things were happening in regard to the C. I. O.," and warned Bell to watch his step because the management would not tolerate a C. I. O. organization. Bell's own quartermaster, Sheldon, asked him who was "working on" Sheldon's men in behalf of the Union, to which Bell replied that he was a member of the Union and was the person working on Sheldon's men. Similarly, Dillon, upon being informed that his quartermaster, Nelson, wanted to know the source of union activities among his subordinates, stated to Nelson that he was a member



the Union's organizing committee. After Dillon's dismissal, Hussey, a quartermaster in the hull-fitting and plant department, told him that if he had taken Hussey's advice and avoided union activity, he would still be working. Against the background of the supervisory employees' antiunion statements and of the labor organization foisted upon its employees by the respondent, the discharges which followed are highly suspicious.

It is equally true, however, that a general lay-off occurred at the time that these men were dismissed. On May 1, 1937, there were 775 men on the pay roll of the electrical department. During May, 64 were laid off. Bell was one of 13 dismissed on May 31. On the next day, Anderson and Wright were laid off, the first two of 179 men released during June. By September 1, only 391 employees remained in the department. Bell, Anderson, and Wright, as first-class electricians, received relatively high wages. The work upon which Wright and Bell were engaged at the time of their release was continued by men having a lower rating.

Five or six men working under Nelson in the plumbing department were dismissed during the same week as was Dillon. After Dillon's release, 28 of the 50 men then working for Nelson were laid off. All of the remaining 22 have greater seniority than Dillon. On June 22, as the result of a telegram of recommendation from the respondent, Dillon secured a job at considerably higher wages with the E. I. Dupont Company at its Amphyll, Virginia, plant.

There is no evidence that the general lay-off in the electrical department and in the plumbing department was designed or intended to strike at unionization.

One matter remains for disposition. The Trial Examiner, in reaching the conclusion that Bell, Anderson, Wright, and Dillon were discriminatorily discharged, relied upon certain testimony of Bell regarding a telephone conversation allegedly overheard by him while waiting for an interview in the office of the employment manager of the Dupont plant at Amphyll on June 29. On that day, Wright, Anderson, and Dillon were working at the Amphyll plant. Bell's testimony, in substance, is that the employment manager, in Bell's presence, received a telephone call from the respondent's yard in the course of which the person initiating the call characterized Wright, Anderson, and Dillon as "agitators." The respondent's witnesses denied making the call, and the acting manager of the local telephone exchange at Newport News testified that the records of the telephone company fail to show that such a call was made. Upon the entire record we are unable to find that the respondent did, in fact, make the telephone call in question.

We believe that the record does not support the complaint that the respondent discriminatorily discharged Bell, Anderson, Wright, and Dillon, or any of them.

## IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III A, above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and between the several States and foreign countries, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

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## THE REMEDY

Having found that the respondent has dominated and interfered with the formation and administration of the Committee and contributed support to it, that the Committee is incapable of serving the respondent's employees as their genuine representative for the purpose of collective bargaining, we will order the respondent to withdraw recognition from and disestablish the Committee as such representative.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Board makes the following:

*Conclusions of law*

1. Industrial Union of Marine and Shipbuilding Workers of America and Employees Representative Committee of the Newport News Shipbuilding and Dry Dock Company, also known as Representation of Employees, are labor organizations, within the meaning of Section 2 (5) of the Act.

2. By dominating and interfering with the formation and administration of Employees Representative Committee of the Newport News Shipbuilding and Dry Dock Company, also known as Representation of Employees, and contributing support to it, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

5. The respondent has not discriminated in regard to the hire and tenure of employment of John M. Darling, Jr., William H. Bell, Melvin L. Anderson, E. B. Wright, and Jesse Dillon, or any of them, within the meaning of Section 8 (3) of the Act.

*Order*

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Newport News Shipbuilding and Dry Dock Company, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

1467 (a) Dominating or interfering with the administration of Employees Representative Committee of the Newport News Shipbuilding and Dry Dock Company, also known as Representation of Employees, or the formation or administration of any other labor organization of its employees, and contributing support to Employees Representative Committee of the Newport News Shipbuilding and Dry Dock Company, also known as Representation of Employees, or to any other labor organization of its employees;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act;

(a) Withdraw all recognition from Employees Representative Committee of the Newport News Shipbuilding and Dry Dock Company, also known as Representation of Employees, as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and completely disestablish Employees Representative Committee of the Newport News Shipbuilding and Dry Dock Company, also known as Representation of Employees, as such representatives;

(b) Post immediately in conspicuous places throughout its plant copies of this order;

(c) Maintain such posted notices for a period of at least thirty (30) consecutive days from the date of posting; and

(d) Notify the Regional Director for the Fifth Region in writing within ten (10) days from the date of this order what steps the respondent has taken to comply herewith.

And it is further ordered that the complaint, in so far as it alleges that the respondent had discriminated in regard to the hire and tenure of employment of John M. Darling, Jr., William H. Bell, Melvin L. Anderson, E. B. Wright, and Jesse Dillon, be, and it hereby is dismissed.

1470 In United States Circuit Court of Appeals, Fourth Circuit

No. 4390

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY,  
A CORPORATION, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

*Petition for review of order of National Labor Relations Board*

Filed August 18, 1938

Your petitioner, the Newport News Shipbuilding and Dry Dock Company, is a corporation created and existing under the laws of the Commonwealth of Virginia; having its principal office and place of business in Newport News, where the alleged unfair labor practices hereinafter referred to are said to have been committed and files this, its petition, against The National Labor Relations Board, hereinafter referred to as "the Board," and prays that the Court will review and set aside that part or portion of that certain order of the Board dated August 9th, 1938, and served on your petitioner August 10th, 1938, directing your petitioner and its officers, agents, successors, and assigns to:

1471 1. Cease and desist from:

(a) Dominating or interfering with the administration of Employees Representative Committee of the Newport News Shipbuilding and Dry Dock Company, also known as Representation of Employees, or the formation or administration of any other labor organization of its employees, and contributing support to Employees Representative Committee of the Newport News Shipbuilding and Dry Dock Company, also known as Representation of Employees, or to any other labor organization of its employees;

(b) In any other manner, interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act;

(a) Withdraw all recognition from Employees Representative Committee of the Newport News Shipbuilding and Dry Dock Company, also known as Representation of Employees, as the representative of any of its employees for the purpose of dealing with the respondent (petitioner) concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and completely disestablish Employees Representative Committee of the Newport News Shipbuilding and Dry Dock Company, also known as Representation of Employees, as such representatives;



(b) Post immediately in conspicuous places throughout its plant copies of this order;

(c) Maintain such posted notices for a period of at least thirty (30) consecutive days from the date of posting; and

1472 (d) Notify the Regional Director for the Fifth Region in writing within ten (10) days from the date of this order what steps the respondent (petitioner) has taken to comply herewith, and in support of this, its petition, respectfully shows unto your Honors that:

## I

The Board is a quasi judicial tribunal created and existing under the Act of Congress known as the "National Labor Relations Act," approved July 5, 1933; 29 U. S. C. A. 151, et seq. This petition is filed under the provisions of said Act.

## II

Long before and at the times hereinafter mentioned, your petitioner has owned and operated and now owns and operates a single, integrated, complete, and independent shipbuilding plant located at Newport News, in the Eastern District of Virginia, and within the 5th Region of said Board, where it conducts its principal business, of designing and building ships and, incidental to such principal business, repairs such ships as are sent or come to it for repairs and, on occasion, has built certain hydraulic or water turbines.

No strike or other labor dispute exists or has existed between petitioner and its employees at or during any of the times herein mentioned and the relations between your petitioner and its employees are in the strictest sense of the word harmonious and friendly.

On June 4, 1937, one Philip H. Van Gelder, never an employee of petitioner, but a resident of Camden, New Jersey, and Secretary-Treasurer of the Industrial Union of Marine and Shipbuilding Workers of America, made and lodged a charge with the Regional Director for the 5th Region of said Board the Material parts of which, in substance, allege that your petitioner, its servants or agents, were dominating and interfering with petitioner's employees' 1473 right of self-organization by sponsoring, dominating, interfering with and lending financial support to a so-called labor organization known as "Representation of Employees" at petitioner's said shipyard in Newport News. As required by Art. II, Sec. 5 of the Board's rules and regulations, a copy of this "charge" was served on petitioner along with the Board's complaint hereinafter referred to.

Under date of June 18, 1937, the said Regional Director issued and thereafter served a complaint against your petitioner the material parts of which, in substance, allege that the aforesaid Industrial Union, having charged that your petitioner had engaged and was then engaging in certain unfair labor practices affecting commerce



as defined by said Act, the Board, by said Regional Director, "hereby alleges":<sup>9</sup>

1. That your petitioner for a long period of time had been engaged in the construction, overhaul and repair of ships at Newport News.

2. That petitioner in the course and conduct of its business causes and has continuously caused a considerable portion of the raw materials used by it in its said business to be purchased and transported in interstate commerce and causes and has continuously caused a considerable portion of the products manufactured by it and of the ships overhauled or repaired by it to be transported in interstate commerce and in commerce with foreign countries.

3. That the said Industrial Union is a labor organization as defined in Sec. 2, subdivision 5 of said Act.

7-8. That your petitioner while operating as described above, in June 1927, caused to be put into force and effect among its 1474 employees a plan known as "Representation of Employees" and thereafter down to and including the date of the filing of said complaint by said Board, did foster, encourage, sponsor, dominate, and interfere with the formation, enlistment of membership and administration of the said labor organization known as "Representation of Employees," and did contribute financial and other support thereto and did thereby engage and is engaging in unfair labor practices within the meaning of Sec. 8, subdivision 2 of said Act.

9. That by the acts complained of as aforesaid your petitioner did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of said Act and thereby engaged and is engaging in unfair labor practices within the meaning of Section 8, subdivision 1 of said Act.

10. That a labor dispute (in the complaint termed "current" labor dispute) was caused by the alleged unfair labor practices which burdened and obstructed, and continues to burden and obstruct commerce among the several states and with foreign countries, and the free flow thereof; did interfere and continues to interfere with the execution of orders, sale, distribution, and shipments of the products of the petitioner in interstate and foreign commerce; did cause and/or tends to cause the diversion of production and the diversion of commerce thereof from and among the several states of the United States and between, said states and foreign countries.

11. That the activities of your petitioner, as set forth in said complaint, occurring in connection with the operations of the petitioner, have a close, intimate and substantial relation to trade, traffic, and commerce among the several states and with foreign countries and tend to lead to labor disputes burdening and obstructing said commerce and the free flow of said commerce.

<sup>9</sup> The paragraph numbers immediately following correspond to the pertinent charge in the complaint made by the Board. Because the Board has reversed the Trial Examiner on certain of his findings as to other alleged unfair labor practices, counsel for petitioner have deemed it desirable to paraphrase the indicated portions of the Board's complaint rather than to unduly lengthen this petition by quoting them in full.

12. That the aforesaid acts of your petitioner constitute unfair labor practices affecting commerce within the meaning of Sec. 8, subdivisions 1, 2, and 3, and Sec. 2, subdivisions 6 and 7 of said Act.

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### III

In due course, your petitioner sought to enjoin the said proceedings and the hearings were continued from time to time until August 30, 1937. Petitioner was denied an injunction so the hearing began August 30, 1937, and were concluded September 8, 1937. Your petitioner appeared specially.

### IV

The Employees' Plan of Representation, an association of the employees in petitioner's shipyard, appeared specially and intervened in the proceedings and filed their own motion to dismiss the charge and complaint on the ground that the Board was without jurisdiction. They also filed their answer and participated in the hearings. Petitioner's employees had no part in the instigation of these proceedings.

### V

Prior to the hearings, petitioner, appearing specially, filed with the Regional Director a motion to dismiss the proceedings on the ground that the Board was without jurisdiction in the case; and, likewise, petitioner, without waiving its said motion to dismiss and expressly reserving all its rights to object further to said jurisdiction, filed its answer.

By its answer, petitioner admitted that for a long period of time it has been engaged in the designing, construction, overhauling, and repairing of ships at Newport News, but denied all of the other material allegations of the charge and complaint except that it admitted it "did lend its moral support and encouragement to the formation and continuation of said plan known as Representation of Employees," and affirmatively alleged that "No labor dispute existed between petitioner and its employees"; alleged that at the present time and for a number of years last past its business has consisted principally and to a very large extent wholly of building vessels for the United States Navy; that said vessels are not employed as instrumentalities of commerce or in connection with such in-  
1476 strumentalities; that such other work as petitioner may do, as alleged in said complaint, constitutes a decided minor part of petitioner's operations and is not commerce within the meaning of said Act and does not burden or obstruct or affect commerce or the free flow thereof within the meaning of said Act.

### VI

When the case came on for hearing, your petitioner, appearing specially and reserving its rights as set forth in the above men-

tioned motion to dismiss (because the Board lacked jurisdiction of your petitioner), renewed its said motion to dismiss and reiterated the grounds thereof. Your petitioner moved the Trial Examiner to rule on your petitioner's said motions to dismiss for lack of jurisdiction. This the Trial Examiner declined to do until the last day of the hearing and your petitioner was therefore forced against its will and over its objection and protest to go into and continue with the hearing and to cross-examine the Board's witnesses and to produce witnesses on its own behalf.

## VII

At the conclusion of the hearing, the Board's Attorney moved that the complaint be amended to conform to the evidence. This motion was granted over the objection of petitioner.

At the conclusion of the hearing, petitioner renewed its said motions to dismiss the complaint on the ground that the Board lacked jurisdiction. The motions were denied.

## VIII

The Trial Examiner rendered his intermediate report (served on petitioner March 10, 1938) and, so far as here material, in effect found that petitioner is engaged in commerce within the meaning of the Act and that petitioner "by dominating and interfering with a labor organization, namely, the plan known as 'Representation of Employees' and by contributing financial and other support to it, has engaged and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8 (2), Section 2 (6) and (7) of the National Labor Relations Act" and recommended that a cease and desist order be issued by the Board.

Petitioner made and duly filed its exceptions to the Trial Examiner's report and oral argument in support of said exceptions was heard by the Board and the case was submitted for decision on May 11, 1938.

## IX

Prior to said oral argument, the Board notified petitioner in writing that the Board desired further evidence with reference to facts affecting jurisdiction of the Board and in said notice said that unless petitioner should be willing to stipulate such further facts the case would be reopened. In view of this position of the Board and to save further long, protracted, and expensive litigation, petitioner entered into a written stipulation dated May 11, 1938, containing certain facts which the Board desired stipulated.

## X

On August 9, 1938, the Board made its decision, holding that the operations of the petitioner "affect trade, traffic, and commerce among

the several states, and between the states and foreign countries," and holding that petitioner has dominated and interfered with the formation and administration of the Employees Representative Committee and has contributed support to it, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed its employees in Section 7 of the Act. It found further "that the Committee is incapable of serving your petitioner's employees as their genuine representative for the purposes of collective bargaining," and upon the basis thereof entered the order hereinabove set out and herein complained of.

## XI

Your petitioner represents that the said order is unauthorized and without evidence to support it and that it should therefore be set aside for these, among other, reasons apparent on the record:

1478 1. The Board is without jurisdiction of petitioner or of petitioner's employees for that

(a) Shipbuilding is not commerce within the meaning of the Constitution or of the Act, and there is no evidence that your petitioner has engaged or employed any of its product in commerce.

(b) The uncontradicted evidence shows that petitioner's connection with its product ceased with the delivery thereof to the owner, in the case of vessels built for the United States Navy, at the United States Navy Yard, Norfolk, and in the case of merchant vessels, at petitioner's place of business at Newport News, all in the Commonwealth of Virginia.

2. There is no substantial evidence upon which the Board's findings of fact and conclusions of law are based, that,

(a) Petitioner dominated, interfered with and coerced its employees in the exercise of any right or rights guaranteed them under the National Labor Relations Act; and that

(b) The Employees Representation Committee "is incapable of serving the respondent's (petitioner's) employees as their genuine representative for collective bargaining."

3. The Board failed to find, as it should have found, that no labor dispute, "current" or otherwise, has existed between petitioner and its employees. These proceedings were not instigated by your petitioner's employees.

4. The Board failed to find, as it should have found, that petitioner is not dominating or interfering with the administration of the Employees Representative Committee; that it is not dominating or interfering with the formation or administration of any other labor organization of its employees; that it is not contributing support to said Committee or to any other labor organization of its employees, and that it has not made any such contribution since June 1937, if at all.

1479 5. The Board failed to find, as it should have found, that petitioner is not in any manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively with representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed by Section 7 of said Act.

6. The Board's conclusions of law are unwarranted by the facts as disclosed by substantial evidence and are erroneous and contrary to law.

7. The affirmative action the Board would require petitioner to take is unwarranted by the facts or the law, is unjust, inequitable, illegal, and arbitrary. Petitioner has no right, and claims no right, to dictate to its employees that they disestablish an organization which they voluntarily organized and have maintained since June 1927.

8. The order of the Board would not effectuate the policy of the Act but would further tend to bring the Act into disrepute; nor would the order of the Board effectuate the policies of an act designed to remove the sources of industrial strife by encouraging the friendly adjustment of industrial disputes.

9. In view of all the facts, the order of the Board would require petitioner to do a futile thing by posting and maintaining posted for thirty (30) days the notice required by the Board.

10. The order of the Board is contrary to law and is unsupported by substantial evidence.

Wherefore your petitioner prays that that part of said order directing your petitioner, its officers, agents, successors, and assigns to cease and desist from the matters and things in said order set out, and to take the affirmative action therein required, be set aside; that an order may issue directing said Board to certify forthwith

1480 to this Court a transcript of the record in said proceedings, including all pleadings, motions, rulings, and testimony upon which the said order was based, together with all decisions, findings, and orders entered by said Board, and that your petitioner may have all such other relief, both general and special, and that such orders and decrees may be made herein as to the Court shall seem meet and proper.

And your petitioner will ever pray, &c.

NEWPORT NEWS SHIPBUILDING AND  
DRY DOCK COMPANY,

By Counsel,

SKINNER & MARSHALL, p. q.

FRED H. SKINNER,

JOHN MARSHALL.

[Duly sworn to by J. B. Woodward, Jr.; jurat omitted in printing.]



1485

## In United States Circuit Court of Appeals

*Answer of National Labor Relations Board to petition for review and request for enforcement of order of National Labor Relations Board*

Filed August 30, 1938

*To the Honorable, the Judges of the United States Circuit Court of Appeals for the Fourth Circuit:*

Comes now the National Labor Relations Board, hereinafter called the Board, by J. Warren Madden, Chairman, and Donald Wakefield Smith, Member of said Board, and pursuant to the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151 et seq.) files this answer and request for enforcement of the Board's order:

1. The Board admits each and every allegation contained in part I of the petition for review.

2. Answering the allegations of parts II, III, IV, V, VI, VII, VIII, IX, and X of the petition for review, the Board prays reference to the certified record of the proceeding before the Board, filed 1486 herein, for a full and exact statement of the provisions of the charge, the complaint and notice of hearing, the motions to dismiss and answer of petitioner and the motion to intervene and the answer of Employees Representative Committee of the Newport News Shipbuilding and Dry Dock Company (hereinafter called the Committee), the intermediate report of the Trial Examiner, the stipulation of May 11, 1938, setting forth further facts relating to petitioner's business and made part of the record by agreement between the Board and petitioner, the exceptions to said report filed by petitioner and the Committee, the decision of the Board including its findings of fact, conclusions of law, and order, and other proceedings had in said matter before the Board.

3. The Board denies each and every allegation contained in part XI of the petition for review.

Wherefore, having duly answered each and every allegation contained in the petition for review, the Board prays this Honorable Court that the said petition, in so far as it prays that the Board's order be set aside, be denied.

Further answering, the Board pursuant to the authority conferred upon it by the National Labor Relations Act respectfully requests this Honorable Court for the enforcement of the order issued by the Board in the proceeding instituted against petitioner, said proceeding being known on the records of the Board as Case No. C-470, the title thereof being "In the Matter of Newport News Shipbuilding and Dry Dock Company, and Industrial Union of Marine and Shipbuilding Workers of America."

In support of its request for the enforcement of said order, the Board respectfully shows:

(a) Petitioner is, and at all times herein mentioned was, a corporation, organized and existing under the laws of the Commonwealth of Virginia, with its principal office and plant located 1487 in Newport News, Virginia, where the unfair labor practices occurred.

(b) By reason of the matters alleged in paragraph (a) hereof, this Court has jurisdiction of this request for enforcement by virtue of Section 10 (e) and (f) of the National Labor Relations Act.

(c) On June 18, 1937, following the filing of a charge with the Regional Director for the Fifth Region of the Board by Industrial Union of Marine and Shipbuilding Workers of North America (hereinafter called the Union) alleging the commission by petitioner of certain unfair labor practices within the meaning of the Act, the Board, by its Regional Director for the Fifth Region, pursuant to Section 10 (c) of the Act, issued a complaint in said proceeding alleging that petitioner had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the Act. The complaint, together with a notice of hearing setting the same down for June 29, 1937, was duly served upon petitioner herein. Thereafter, during the pendency of a suit brought by petitioner in the United States District Court to enjoin the agents of the Board from holding said hearing, which suit was terminated by a decree of dismissal issued by said District Court and affirmed by this Honorable Court and the Supreme Court, the date of the hearing on the Board's complaint was postponed a number of times upon notice and was finally set for August 30, 1937. Prior to the hearing, petitioner, appearing specially, filed a motion to dismiss the Board's complaint for want of jurisdiction, which motion was renewed by petitioner at the hearing, and also filed its answer to the complaint without waiving its motion to dismiss. Also prior to the hearing a motion to intervene in said proceeding together with an answer to the Board's complaint was filed 1488 by the Employees Representative Committee of the Newport News Shipbuilding and Dry Dock Company (hereinafter referred to as the Committee). Said motion to intervene was granted by the said Regional Director prior to the hearing.

(d) On August 28, 1937, the Board duly made an order designating James C. Paradise as Trial Examiner in said proceeding.

(e) Thereafter, beginning August 30, 1937, a hearing was held before said Trial Examiner at Newport News, Virginia. The Board, the petitioner, and the Committee were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine, and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to all parties.

(f) Thereafter, on March 9, 1938, the Trial Examiner filed an intermediate report, in which he found that petitioner had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the Act and recommended that petitioner cease and desist

from the unfair labor practices so found and take certain affirmative action to effectuate the purposes of the Act; namely, disestablish and withdraw recognition from the Committee as collective bargaining agent of petitioner's employees and reinstate four of petitioner's employees to their former positions with back pay. The Trial Examiner recommended that the complaint be dismissed in so far as it alleged the discriminatory discharge of a fifth employee of the petitioner.

Exceptions to the Intermediate Report of the Trial Examiner were filed by petitioner and the Committee on March 24 and March 19, 1938; respectively. Thereafter on May 11, 1938, oral argument 1489 on said exceptions was held before the Board at Washington,

D. C. Petitioner, the Committee, and the Union were represented by counsel and participated in said argument, and petitioner, in addition, filed a brief, which was duly considered by the Board. At the same time a stipulation between the Board and petitioner, setting forth additional facts relating to the business of the petitioner, was by agreement between the Board and the petitioner, made part of the record of said proceeding.

(g) Thereafter, on August 9, 1938, the Board being sufficiently advised in the premises and having duly considered the matter and being of the opinion that upon all the testimony and evidence that petitioner had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the Act but that petitioner had not engaged and was not engaging in unfair labor practices within the meaning of Section 8 (3) of the Act, duly rendered its decision in which it affirmed the ruling of the Trial Examiner in so far as he found that petitioner had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the Act, but reversed the ruling of the Trial Examiner in so far as he found that petitioner had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (3) of the Act. In its decision, the Board stated its findings of fact and conclusions of law and entered the following order directed to petitioner, its officers, successors, and assigns:

#### ORDER

"Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that 1489 the respondent, Newport News Shipbuilding and Dry Dock Company, and its officers, agents, successors, and assigns, shall:

"1. Cease and desist from:

"(a) Dominating or interfering with the administration of Employees Representative Committee of the Newport News Shipbuilding and Dry Dock Company, also known as Representation of Employees, or the formation or administration of any other labor organization of its employees, and contributing support to Employees Represent-

ative Committee of the Newport News Shipbuilding and Dry Dock Company, also known as Representation of Employees, or to any other labor organization of its employees;

“(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right of self-organization, for form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act.

“2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

“(a) Withdraw all recognition from Employees Representative Committee of the Newport News Shipbuilding and Dry Dock Company, also known as Representation of Employees, as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and completely  
1490 disestablish Employees Representative Committee of the Newport News Shipbuilding and Dry Dock Company, also known as Representation of Employees, as such representatives;

“(b) Post immediately in conspicuous places throughout its plant copies of this order;

“(c) Maintain such posted notices for a period of at least thirty (30) consecutive days from the date of posting; and

“(d) Notify the Regional Director for the Fifth Region in writing within ten (10) days from the date of this order what steps the respondent has taken to comply herewith.

“And it is further ordered that the complaint, in so far as it alleges that the respondent had discriminated in regard to the hire and tenure of employment of John M. Darling, Jr., William H. Bell, Melvin L. Anderson, E. B. Wright, and Jesse Dillon, be, and it hereby is dismissed.”

(h) Said order was duly served upon the attorneys for the petitioner, the Committee, and the Union.

(i) Said order is and at all times since its issuance has been in full force and effect.

Wherefore, the Board prays this Honorable Court that it deny the petition to set aside the Board's order, and that it grant the Board's request for enforcement of said order; and pursuant to Section 10 (f) of the National Labor Relations Act the Board has certified and filed with this Court a transcript of the entire record of the proceeding before the Board, including the pleadings, testimony, and evidence, findings of fact and conclusions of law, and order of the Board. The Board further prays this Honorable Court that it cause

notice of the filing of this answer and request for enforcement  
1492 and transcript to be served upon petitioner and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings therein, testimony and evidence, and the proceedings set forth in the transcript

and upon the order made thereupon, a decree denying in whole the petition to set aside and enforcing in whole the said order of the Board and requiring petitioner, its officers, agents, successors, and assigns, to comply therewith.

J. WARREN MADDEN, *Chairman*,  
DONALD WAKEFIELD SMITH,  
*Member*,  
*National Labor Relations Board*.

Dated at Washington, D. C., this 29th day of August 1938.

CHARLES FAHY,  
*General Counsel*.

[Duly sworn to by J. Warren Madden and Donald W. Smith;  
erratum omitted in printing.]

1498 In United States Circuit Court of Appeals

*Supplemental certificate of the National Labor Relations Board*

Filed October 3, 1938

The National Labor Relations Board, by its Secretary, duly authorized by Section 1 of Article VI, of the Rules and Regulations of the National Labor Relations Board, Series 1, as amended, hereby certifies that the documents annexed hereto are a part of the record in the above entitled matter previously certified to this Court under date of September 6, 1938.

Fully enumerated they are as follows:

1. Copy of letter of July 14, 1938, from Frank A. Kearney to the Board, enclosing result of referendum of June 7, 1938, and result of Employees Representation election of June 14, 1938, together with copy of enclosures, and copy of letter of July 25 re inclusion of material in record.

In testimony whereof the Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 1st day of October, 1938.

SEAL]

NATHAN WITT,  
Nathan Witt, *Secretary*,  
*National Labor Relations Board*.



KEARNEY & KEARNEY,  
Attorneys and Counselors at Law,  
Phoenix Virginia, July 14, 1938

Frank A. Kearney,  
Ross A. Kearney.

NATIONAL LABOR RELATIONS BOARD,  
Washington, D. C.

1499 GENTLEMEN: I enclose herewith the result of the Employee Representation election held on June 14, 1938. From this you will note that 86.50% of the employees present voted in the election.

On June 7th a referendum was held as to whether the employees of the Shipyard wished to continue the Employees Representation Plan or not. This Referendum was held at my suggestion at a meeting with all of the committeemen of the Employees Representation Plan to determine just what the employees in the yard wanted to do.

It is their position and my position if the men did not want to continue the Plan, in view of the action of the Trial Examiner at the hearing held before the National Labor Examiner, I would have no further interest in the matter and the committee elected by the Employees Representation Plan felt the same way. I enclose for your consideration the results of the referendum.

I am forwarding these results on to you in order that you may be advised as to how the employees of the Newport News Shipbuilding and Dry Dock Company feel with respect to the Employee Representation Plan.

Very truly yours,

fk/l.

(S) FRANK A. KEARNEY

*Result of referendum vote June 7, 1938*

District No. 1—Yes 121, No 31.

District No. 2—Yes 38, No 10.

District No. 3—Yes 26, No 6.

District No. 4—Yes 99, No 27.

District No. 5—Yes 30, No 9.

District No. 6—Yes 139, No 52.

District No. 7—Yes 43, No 34.

District No. 8—Yes 129, No 27.

District No. 9—Yes 147, No 27.

District No. 10—Yes 159, No 49.

District No. 11—Yes 52, No 13.

District No. 12—Yes 58, No 17.

1500 District No. 13—Yes 127, No 54.

District No. 14—Yes 51, No 4.

District No. 15—Yes 149, No 53.

District No. 16—Yes 40, No 8.

District No. 17—Yes 52, No 13.

District No. 18—Yes 140, No 3.  
 District No. 19—Yes 84, No 4.  
 District No. 20—Yes 85, No 10.  
 District No. 21—Yes 156, No 11.  
 District No. 22—Yes 69, No 3.  
 District No. 23—Yes 102, No 9.  
 District No. 24—Yes 5, No 29.  
 District No. 25—Yes 39, No 13.  
 District No. 26—Yes 77, No 20.  
 District No. 27—Yes 25, No 3.  
 District No. 28—Yes 30, No 0.  
 District No. 31—Yes 105, No 0.  
 District No. 32—Yes 42, No 5.  
 District No. 33—Yes 150, No 1.  
 District No. 34—Yes 25, No 0.  
 District No. 35—Yes 70, No 2.  
 District No. 36—Yes 84, No 2.  
 District No. 37—Yes 244, No 4.  
 District No. 38—Yes 41, No 1.  
 District No. 39—Yes 45, No 0.  
 District No. 40—Yes 48, No 1.  
 District No. 41—Yes 99, No 1.  
 District No. 42—Yes 48, No 3.  
 District No. 43—Yes 72, No 0.  
 District No. 44—Yes 60, No 0.  
 District No. 45—Yes 50, No 1.  
 Yes total 3,455. No total 562. Void 51. Grant total 4,068.

*Result of election of employees' representatives June 14, 1938*

District #1—Baker, J. L. 122\*; Hicks, G. C. 0; Smith, Alphonse 43.  
 District #2—Apperson, L. 1; Mendell, C. I. 40\*; Tilson, M. 22.  
 District #3—Futrell, W. G. 19; Moore, O. B. 1; Nicholas, R. G. 20\*.  
 District #4—Carter, Claude 39; Cooke, G. E. 56; Eacho, Wm. 61\*.  
 District #5—Bartley, C. H. 16\*; Mitchell, B. A. 13; Woodmansee, H. B. 12.  
 District #6—Blanton, B. 38; Goodwin, E. T. 144\*; Liverman, R. B. 14.  
 District #7—Helmer, T. J. 21; Phillips, A. L. 4; Smith, J. J. 24\*; Peterson, E. H. 52\*\*.  
 District #8—McCoy, J. L. 52; Pope, C. L. 44; Walls, J. A. 69\*.  
 District #9—Stone, Emrey 127\*; Smith, E. C. 35; Welch, Sam. 15.

\*\* Ineligible (Article III, Sec. 1).

1501 District #10—Fox, M. S. 96; Hyle, I. H. 28; Pierce, J.

97\*.

District #11—Barnes, J. H. 27; Stennett, P. G. 34\*; Youn  
I. B. 0.

District #12—Cole, C. E. 32; Martin, A. L. 48\*; Waldrop, L. G.

District #16—Lambert, F. A. 6; Wilson, J. G. 33\*; Whear

L. M. 7.

District #17—Garver, H. J. 14; Hancock, P. B. 11; Short, R. C.  
40\*.

District #18—Burbank, M. L. 24; Dews, C. A. 63\*; Rich, E. E. 5

District #19—Ayler, J. W. 4; Probst, C. F. 33; Wornom, F. E. 51

District #20—Nunnally, E. D. 35; Williams, T. G. 41\*; Wes  
E. T. 21.

District #21—Hallett, S. E. 24; Steen, J. B. 42; Wilkins, I. C.  
90\*.

District #22—Dickenson, J. W. 40\*; Farinholt, C. T. 21; Pierce  
R. F. 10.

District #23—Brown, H. H. 17; Tignor, C. W. 6; Via, G. E. 75

District #24—Langslow, E. B., Jr. 3; Parks, H. W. 0; Tighe, B.  
28\*.

District #25—Bulifant, B. S. 3; Leicester, J. T. 35\*; Oliver, C. H.  
13.

District #26—Garland, J. R. 13; Magin, N. 68\*; Soar, G. H.  
Jr. 17.

District #27—Andrews, W. H. 21\*; Bennett, D. W. 0; Leighton  
T. H. 12.

District #33—Boyd, Charles 121\*; Hundley, H. 6; Mack, Aaron 1

District #34—Manley, Z. B. 22\*; Wilkins, W. H. 6.

District #35—Cooper, Fred 56\*; Clarke, J. N. 1; Wesley, Geo. 2

District #36—Barkers, R. 16; Elam, Sherman 69\*; Minns, S. 0.

District #37—Drew, Moses 146\*; Hardy, I. S. 143; Howard, Rob  
ert 4.

District #38—King, J. J. 17; Owens, C. 22\*; Selden, S. D. 0.

District #39—Ingram, Adam 1; Williams, T. V. 24\*; Young  
W. G. 23.

District #40—Stephens, H. 1; White, Robert 46\*; Warren, Perc  
3.

District #41—Anderson, Geo. 3; Bright, H. D. 3; Travis, Solomo  
98\*.

District #42—Hill, W. T. 11; Thompson, L. 34\*; Thomas, W. S.

District #43—Burnette, Wm. 6; Clarke, S. 1; Timberlake, C. C.  
66\*.

District #44—Drew, N. C. 5; Graham, T. 53\*; Payne, W. 1.

District #13—Baxter, M. H. 109\*; Cardwell, C. T. 73; Soude  
O. L. 18.

District #14—Harper, W. S. 3; Spruill, O. M. 2; Woodall, W. N.  
50\*.

District #15—Brockley, E. E. 50; Gay, E. S. 27; Robinson, W. C. 122\*  
 District #28—Cooper, R. H. 3; Carter, R. H. 1; Russell, J. 26\*  
 District #31—Hines, A. 0; Johnson, Wesley 106\*; Terrell, E. 0.  
 District #32—Robinson, J. E. 33\*; Whitehead, J. B. 18.  
 District #45—Brown, L. 39\*; Jones, G. E. 7; Minkins, G. M. 3.  
 Votes Thrown Out 42; Eligible voters 5,378; Votes cast 4,233;  
 % Eligible voting 78.7; Voters present 4,889; Votes cast 4,233; %  
 present-voting 86.50.

1502

KEARNEY & KEARNEY,  
 ATTORNEYS AND COUNSELORS AT LAW,  
*Phoebus, Virginia, July 25, 1938.*

Frank A. Kearney.  
 Ross A. Kearney.

In Re: Newport News Shipbuilding & Dry Dock Company—  
 V-C-191 C-470

NATIONAL LABOR RELATIONS BOARD,  
*Washington, D. C.*

DEAR SIR: I have your letter of July 21st stating that the data I sent you in my letter of July 14th had been received and would be considered.

In my letter of July 14th I neglected to ask to have this made a part of the record in the case. I would appreciate if you would advise me if this has been done.

Very truly yours,

fk/1.

(S) FRANK A. KEARNEY.

1503

In United States Circuit Court of Appeals

*Petition of employees' representative committee of the Newport News Shipbuilding and Dry Dock Company for leave to intervene*

Filed in Open Court October 3, 1938

Now comes the petitioner, the Employees' Representative Committee of the Newport News Shipbuilding and Dry Dock Company, an unincorporated labor organization, who respectfully represents and shows unto the Court as follows:

1. That the Employees' Representative Committee of the Newport News Shipbuilding and Dry Dock Company is a labor organization as defined in Section 2, Sub-Section 5 of the National Labor Relations Act. That its membership is composed entirely and solely of employees below the rank of supervisor of the Newport News Shipbuilding and Dry Dock Company at Newport News, Virginia.

2. That the Employees Representative Committee is and has been recognized by all of the employees and the employer of the Newport

News Shipbuilding and Dry Dock Company as the bargaining agent for the employees of the Newport News Shipbuilding and Dry Dock Company. That the Employees Representative Committee has been annually electing members by the employees of the Newport News Shipbuilding and Dry Dock Company below the rank of superiors since 1927 and that the selection and election of these representatives has been by a majority of the employees and that in each instance the Employees' Representative Committee has been elected by a majority of all of the employees eligible to participate in the election.

1504 3. That your petitioner, the Employees Representative Committee, was made a party to the proceedings before James C. Paradise, Trial Examiner, upon petition of the Employees Representative Committee for leave to intervene.

4. That the Employees' Representative Committee thereafter attended the hearings, as set forth in the petition filed by the Newport News Shipbuilding and Dry Dock Company, filed Exceptions to the Intermediate Report filed by the Trial Examiner, which directly affected the rights of your petitioner and its entire membership. That your petitioner appeared before the National Labor Relations Board and was a party to all of the proceedings instituted by the Board.

5. That the Board on the 9th day of August 1938 affirmed that part of the Intermediate Report that ordered the Newport News Shipbuilding and Dry Dock Company to cease and desist from recognizing the Employees' Representative Committee of the Newport News Shipbuilding and Dry Dock Company as a representative of employees for the purpose of dealing with the respondent concerning the labor disputes, wages, rates of pay, hours of employment, or conditions of work, and completely disestablish Employees' Representative Committee of the Newport News Shipbuilding and Dry Dock Company and further ordered the respondent to take affirmative action to put this order into effect.

6. That the Newport News Shipbuilding and Dry Dock Company is seeking relief from this Court from the order of the National Labor Relations Board and has filed its petition asking for a review, revision, and reversal of the order of the Board, dated August 9, 1938.

7. That a proceeding in this pending cause directly affects your petitioner's organization and its entire membership, which was endorsed by 85% of the voters that participated in a referendum on

1505 June 8, 1938, a report of the vote on the referendum as to whether the Employees' Representative Committee should continue or not is filed herewith and marked "Exhibit A"; and that subsequently the present members of the Employees' Representative Committee were elected by a majority of the employees of the Newport News Shipbuilding and Dry Dock Company, as their representatives.



8. That your petitioner prays to be made a party respondent to these proceedings so as to determine whether or not the Board has the right to disestablish your petitioner's organization, suspend the existing contractual relations and thereby repudiate the Employees' Representative Committee, your petitioner, as the sole and exclusive bargaining agent of the employees of the Newport News Shipbuilding and Dry Dock Company in face of the fact that your petitioner had been freely and voluntarily chosen and designated as the representative of the employees of the Newport News Shipbuilding and Dry Dock Company for the purpose of collective bargaining by the vast majority of the employees of said company.

9. The enforcement of the Board's order directly affects your petitioner, its membership, and its future existence and that questions of vital and far-reaching importance insofar as your petitioner, its membership, and employees of the Newport News Shipbuilding and Dry Dock Company will be raised in these proceedings and will come before this Court for its decision.

10. That for the foregoing reasons your petitioner, the Employees' Representative Committee of the Newport News Shipbuilding and Dry Dock Company, should be granted leave to intervene generally and should be accorded the right to be heard on any and all questions arising in these proceedings.

Wherefore your petitioner respectfully requests that the Employees' Representative Committee of the Newport News Shipbuilding and Dry Dock Company be granted leave to intervene generally in these proceedings and to become a party hereto including the right to be heard on all questions arising herein and for such other and further relief to which your petitioner may be entitled in the premises.

EMPLOYEES' REPRESENTATIVE COMMITTEE, NEWPORT  
NEWS SHIPBUILDING & DRY DOCK COMPANY,

By I. C. WILKINS, *Chairman*.

Attest:

THOS. G. WILLIAMS,  
*Secretary*.

FRANK A. KEARNEY,  
*Attorney for Petitioner*.

[Duly sworn to by I. C. Wilkins and T. G. Williams; jurat omitted in printing.]

*Exhibit A to petition*

Box 201,  
HILTON VILLAGE, VA.,  
June 8, 1938.

1507 Mr. FRANK KEARNEY,  
*Attorney at Law*,  
*Phoebus, Virginia*.

DEAR SIR: In accordance with the motion adopted at the May 17 Meeting of the Employees Representative Committee, at which you

were present, the Executive Committee, yesterday conducted an election among the employees of the N. N. S. & D. D. Co. to ascertain the views of the employees of the yard as to the plan of Representation now in effect.

The employees balloted upon the following question: "Do you favor the continuation of the Plan of Employees Representation now in effect in the yard?" Yes ( ) No ( ) Place X in desired square.

The results of the balloting was as follows:

Total number "Yes" ballots	3,355
Total number "No" ballots	502
Total number Void ballots	51
Total number Ballots cast	4,068
Total number Employees eligible to vote	5,378
Number of employees eligible to vote not in yard during election day	536

On the above figures the following percentages apply:

Percentage of eligible employees voting	75+
Percentage of eligible employees voting "Yes"	64+
Percentage of eligible employees voting "No"	10+
Percentage of Ballots cast voting "Yes"	85-
Percentage of Ballots cast voting "No"	15%
Percentage of eligible employees not present on election day	10-

Trusting the above will give you the information desired, I am,

Yours truly,

I. C. WILKINS,

I. C. Wilkins,

*Sec. Employees' Representative Committee,*

*N. N. S. & D. D. Co.*

1509 In United States Circuit Court of Appeals, Fourth Circuit

No. 4390

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY, A CORPORATION, AND EMPLOYEES' REPRESENTATIVE COMMITTEE OF THE NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY, INTERVENOR, PETITIONERS

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition for Review and on Request for Enforcement of an Order of the National Labor Relations Board

(Argued November 15, 1938. Decided February 28, 1939).

Before PARKER, NORTH COTT, and SOPER, Circuit Judges.

Fred H. Skinner (John Marshall on brief) for Petitioner Newport News Shipbuilding and Dry Dock Company, and Frank A. Kearney for Petitioner Employees' Representative Committee of the Newport News Shipping and Dry Dock Company, Inter-

1510 venor, and A. Norman Somers, Attorney, National Labor Relations Board (Charles Fahy, General Counsel; Robert B. Watts, Associate General Counsel; Laurence A. Knapp and Mortimer B. Wolf, Attorneys, National Labor Relations Board, on brief) for Respondent.

*Opinion*

Filed Feb. 28, 1939

SOPER, Circuit Judge:

This case comes before the court on petition of the Newport News Shipbuilding and Dry Dock Company to review and set aside an order of the National Labor Relations Board issued against it, and upon the answer of the Board which prays that the petition be dismissed and the order enforced. The controversy grows out of a charge filed with the Board on June 12, 1937, by the Industrial Union of Marine & Shipbuilding Workers of America, that in March, May, and June 1937, the Shipbuilding Company had discharged and refused to reinstate seven named employees because they had joined a labor organization and had engaged in concerted activities for collective bargaining; and that the Shipbuilding Company had dominated and interfered with the employees' right of self organization by dominating, interfering with, and lending financial support to a labor organization in its plant known as Representation of Employees. Upon this charge the Board formulated the complaint that these acts of the Shipbuilding Company constituted unfair labor practices within the meaning of section 8 (1), (2), and (3) of the National Labor Relations Act, 29 U. S. C. A. 151, 158.

Pursuant to section 10 (b) of the Act, the labor organization known as Representation of Employees, or Employees' Representative Committee, was allowed to intervene and answer the complaint.

1511 Evidence was taken before a trial examiner who filed a report sustaining the charges as to the discharge of certain of the seven employees, and as to the domination and interference with the employees' organization. When the case subsequently came before the Board, it held that the evidence did not support the charge that the company had unlawfully discharged the named employees, but it found that the company had dominated and interfered with the formation and administration of the Employees' Representative Committee, and had contributed to its support, and therefore, had engaged in unfair labor practices within the meaning of section 8 (1) and (2) of the Act. The Board ordered the employer to cease and desist from such practices, and to withdraw all recognition from the Employees' Representative Committee, as the representative of its employees with respect to grievances or labor disputes, and also to completely disestablish the Committee as such representative.

The first question which arises on the petition is as to the jurisdiction of the Board, i. e., whether the operations of the Shipbuilding Company are so connected with interstate and foreign commerce that the unfair labor practices alleged come within the Board's jurisdiction as affecting such commerce. On this question we think that the decision of the Board upholding its jurisdiction was clearly correct. A considerable portion of the business consisted of repairing and overhauling instrumentalities of interstate and foreign commerce. Between July 1935 and August 1937 it serviced 322 vessels for private interests at a billing price of more than \$3,000,000; and between June 1934 and the date of the hearing it had under construction for private interests two tug boats and a tank barge, at contract prices aggregating \$1,020,000. Therefore, even if its construction or naval vessels were ignored, its operations must be held to affect interstate commerce substantially; and, as separation of the two types of work is impracticable, the power of Congress with respect to the regulation of the entire business must be upheld. *Consolidated Edison Co. v. National Labor Board*, — U. S. —, 59 S. Ct. 206; *National Labor Relations Board v. Jones and Laughlin Steel Co.*, 301 U. S. 1; *The Shreveport Case*, 234 U. S. 342; *Wallace v. Curran*, 4 Cir., 95 F. 2d 856; *Virginia Ry. Co. 1. System Federation No. 40*, 4 Cir., 84 F. 2d 641, aff. 300 U. S. 515, 536.

But we do not think that the construction of naval vessels in which the company is chiefly engaged, can be ignored. It may be noted in passing that while these vessels are not designed to serve as carriers of commodities for sale or barter, they are intended to navigate the public waters of the United States and to transport persons and property from state to state and to foreign countries (cf. *Gilman v. Philadelphia*, 3 Wall. 713, 724; *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S. 196, 203; *Caminetti v. United States*, 242 U. S. 470, 492); but the regulatory power of Congress may be safely rested upon the fact that by far the greater part of the materials used in the construction of the vessels is received in interstate commerce, which would be affected, if the work of construction should be obstructed by industrial strife. The company employed 6,697 persons at the time of the hearing. During the year 1936, 91.4% of the business consisted in building men-of-war for the United States Navy, 5.8% in repair work, and 2.8% in the construction of hydraulic turbines and miscellaneous work. During this year the total purchases of materials was \$7,479,418 of which only \$815,423.54, or 10.9%, were made within the state, the remainder representing interstate shipments. From January to August 1937, the purchases were \$5,594,240, of which only \$494,351.33, or 8.8%, were made within the state. If, therefore, the purpose of construction be ignored and it be assumed that the construction is of articles which are to have no relation to interstate or foreign commerce, a sufficient ground for regulation appears in the effect of the purchases on interstate commerce, which is within the power and duty of Congress to regulate and protect. If practices in the business will affect such commerce, Congress,

under the clearest principles, has the power to regulate them. We have so held with respect to manufacturing products grown within a state for transportation in interstate commerce. *Mooresville Cotton Mills v. National Labor Relations Board*, 4 Cir., 94 F. 2d 61. The Supreme Court so held with respect to the canning, packing, and shipping of agricultural products grown within a state but shipped in interstate commerce, *Santa Cruz Fruit Packing Co. v. National Labor Relations Board*, 303 U. S. 453. There can be no difference in principle between the case in which manufacture precedes and that in which it follows interstate commerce. If the flow of commerce is obstructed by labor disputes, it can make no difference from which direction the obstruction is applied.

The second question in the case is whether the evidence justifies the order of the Board requiring the disestablishment of the Employees' Representative Committee. The findings of fact upon which the Board found that the Shipbuilding Company had been guilty of dominating and interfering with the Committee were as follows:

"In 1927, in cooperation with its employees, the respondent put into effect at the shipyard a plan of employee representation known as Representation of Employees. The purposes of the plan were stated in its preamble as follows:

"In order to give the employees of the Company a voice in regard to the conditions under which they labor, and to provide an orderly and expeditious procedure for the prevention and adjustment of any future differences, and to anticipate the problem of continuous employment, a method of representation of employees is to be established.

"Provision was made for the election, annually, by the employees of 21 white and 7 colored representatives. The elected representatives each were paid \$100 per year by the respondent for serving in that capacity. Persons holding supervisory positions were ineligible to serve as representatives or to vote for representatives.

"The administration of the plan was vested in four<sup>1</sup> joint committees, consisting respectively of five of the elected representatives and not more than an equal number of representatives chosen from among the employees by the management. The plan provided, in addition, for a so-called Management's Representative whose function it was 'to keep the management in touch with the representatives and represent the management in negotiations with their officers and committees.' A provision calling for the arbitration of differences became operative only upon concurrence of the respondent's president. Amendment of the plan required the affirmative vote of two-thirds of the full membership of one of the joint committees, namely, the Committee on Rules (which included representatives appointed by the management), or of a majority of all the employees' representatives and representatives of management

<sup>1</sup> There were in fact five joint committees.



at an annual conference. The independence of action of elected representatives was 'guaranteed' by permitting them to take questions of discrimination 'to any of the Superior Officers, to the Joint Committee, and to the President of the Company.' The plan contained no provision for the payment of dues.

"The original plan was revised in 1929, 1931, 1934, 1936, and finally, in 1937. The 1931 revision, which remained in effect without material change until 1937, differed from the first plan in the following respects: One white and one colored employee representative were elected by the employees in each department and division, and the respondent appointed an equal number of management representatives. The annual remuneration paid elected representatives by the respondent was reduced to \$60. Instead of four governing joint committees a General Joint Committee was set up to administer the plan, composed of all elected representatives and all representatives of management, a majority of each class of representatives constituting a quorum. The secretary of the General Joint Committee was paid \$5 monthly by the respondent.

An executive committee also was established, comprising five elected employee representatives and five representatives of management. Elections were arranged for by the management representatives 'but insofar as possible conducted by the employees themselves.' Procedure was established for the adjustment of individual employee grievances. It provided that in the event of failure of settlement the respondent's president be notified. Under the plan, the General Joint Committee met monthly to take action upon matters presented by the Management Representative or by employee representatives or subcommittees, but finality of the action of the General Joint Committee was made dependent upon approval by the respondent's president. So, too, amendment of the plan, which could be accomplished by a two-thirds vote of the entire General Joint Committee, became effective 'when approved by the President of the Company.'

"The plan's final revision occurred in May 1937, after the Supreme Court of the United States upheld the constitutionality of the Act. It originated in the General Joint Committee, one-half of whose members, as indicated above, represented the interests of the respondent. It was referred for suggestions to the similarly constituted executive committee and to the elected employee representatives separately. On May 20, 1937, after the Management's Representative announced that the revision was acceptable to the respondent, it was adopted by the General Joint Committee, to take effect June 30. Robeson, the personnel manager, and Woodward, the general manager of the respondent, took an active part in the revision of the plan.

"The Secretary of the Committee, Irving Clark Wilkins, testified that this change was undertaken in order to bring the plan 'within the letter as well as within the spirit of the Wagner Act.' \* \* \* It is apparent that the procedure which was followed was that of

amendment under the existing plan, a procedure which required the consent of the respondent \* \* \*

\* \* \* The two principal changes were the elimination of compensation paid to elected representatives by the respondent, and the substitution for the General Joint Committee and the joint executive committee of a single Employees' Representative Committee (the intervenor herein), composed solely of employee representatives elected by the employees. The plan (Board's Exhibit No. 1K) provides, however, that the action of the Employees' Representative Committee "shall be final, and become effective upon agreement by the company" (Article VI), and that any article in the plan may be amended by a vote of two-thirds of the entire membership of the Committee, which "amendments shall be in effect at the time specified by the Employees' Representative Committee, unless disapproved by the company within 15 days after their passage" (Article IX). The plan contemplates a grievance procedure concluding with presentation of agreements to the respondent's personnel manager or its general manager in the event no settlement has therefore been effected.

\* \* \* "As revised May 20, 1937, the plan has been in operation at the respondent's shipyard since June 20, 1937. The revised plan was printed in booklet form at the respondent's expense and distributed by the supervisors in each department. Copies of the minutes of each meeting held by the Committee are duplicated at the respondent's expense on stationery provided by it and are distributed to the representatives through the yard mailing service. One such copy is regularly sent to the respondent's personnel manager, and one is posted in the respondent's bulletin board in the shipyard."

Upon these findings, the Board concluded that the Company, from the inception of the plan in 1927 until its revision in 1937, had dominated and interfered with the formation and administration of the Employees' Representative Committee, and had contributed to its support, thereby interfering with the employees in the exercise of the rights guaranteed in section 7 of the Act. With respect to the revision of the plan in 1937, the Board said that "the provisions of the plan as revised, no less than the manner of its revision, indicate that it is still the creature" of the employer; and, therefore, the Committee was held to be incapable of serving the employees as their genuine representative for the purpose of collective bargaining.

When the Board finds that an employer has created and fostered a labor organization of its employees, and has dominated its administration, in violation of section 8 of the National Labor Relations Act, and the finding is supported by substantial evidence, the Board has authority under section 10 (c) of the Act to require him to withdraw all recognition to the organization as the representative of his employees. This rule was established in *Labor Board v. Greyhound*

Lines, 303 U. S. 261, and Labor Board v. Pacific Lines, 303 U. S. 272, and has been followed and applied by this court in National Labor Relations Board v. Freezer, 95 F. 2d 840; National Labor Relations Board v. Wallace Mfg. Co., 95 F. 2d 819; National Labor Relations Board v. Eagle Mfg. Co., 99 F. 2d 930; Virginia Ferry Co. v. National Labor Relations Board, decided January 9, 1939; see, also, National Labor Relations Board v. Oregon Worsted Co., 9 Cir., 96 F. 2d 193; National Labor Relations Board v. America Potash & C. Corp., 9 Cir., 98 F. 2d 488.

In setting out the factual basis for the application of this rule of law in the pending case, the Board made no mention of certain facts that were proved either by uncontradicted evidence or by stipulation of counsel. The omission doubtless occurred because in the opinion of the Board the facts referred to were immaterial to the issue; but, in our view, they must be taken into consideration since they bear directly upon the inquiry whether or not the Employees' Representative Committee is capable of representing the employees in collective bargaining, free from domination or interference by the employer. These facts are as follows:

During the whole life of the plan from 1927 until the time 1518 of the hearing before the trial examiner in August and September 1937, the company has not interfered with, discouraged, encouraged or in any way prevented the selection by the employees of representatives of their own choosing.

Any employee below the grade of leading man, who is twenty-one years of age and an American born citizen, and who has been on the pay roll for one year, is eligible for election as a representative. All employees below the grade of leading man, who have been on the payroll for sixty days prior to the date fixed for nominations, are entitled to vote. The entire shipyard is divided into districts for the purpose of nominations and elections, so as to give each craft and each group of workmen a representative.

Nominations and elections are conducted exclusively by the employees in accordance with rules prescribed by the Executive Committee of the Employees' Representative Committee. The plan requires that nominations and elections shall be made by secret ballot, and shall be so conducted as to avoid undue influence or interference, and to ensue fairness in the count. The ballots used are printed and furnished by the employees, and all expenses of the election since 1935 have been borne out of a fund contributed by the employees in 1929 and 1930.

A majority of the employees in each voting district are satisfied with the plan and with what has been accomplished under it.

In 1927 the plan was submitted to the employees for their adoption or rejection, and it was adopted by a vote of 2,430 to 204.

On June 15, 1937, 5,718 out of 6,300 eligible voters at work on that day, elected 43 representatives on the Employees' Representative Committee, 28 white and 15 colored, to serve from July 1, 1937, to June 30, 1938.

On June 7, 1938, after the employees had been notified of the recommendation made by the trial examiner on March 9, 1938, that the Employees' Representative Committee be disestablished, a referendum with reference to the continuance of the plan was held. 3,455 workers voted to continue the plan, 562 voted to discontinue the plan, and 51 ballots were void.

On June 14, 1938, the annual election was held. 4,233 out of 4,889 men present at work elected 43 representatives to serve from July 1, 1938, to June 30, 1939. 42 votes were thrown out.

The management of the Shipbuilding Company has always been willing to negotiate with the Committee in regard to any matter affecting wages, hours, or conditions of work, and the Committee has been successful from time to time in securing changes in these respects beneficial to the men.

There has been no action on the part of the management or by any officers or persons in a supervisory capacity in the shipyard, to discourage membership in any union.

For more than forty-three years prior to the hearing, there has been no labor dispute or disturbance that has interfered with the operation of the yard.

In addition to these uncontradicted facts, it is noteworthy that equal representation of the management and of the men on the joint committees prior to July 5, 1935, was not obnoxious to any statute then in force. The revision of the plan in 1937 was undertaken for the purpose of bringing the plan into literal harmony with the statute after doubts as to the constitutionality of the statute had been quieted by the decision of the Supreme Court in *Labor Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, on April 12, 1937. The revision was adopted on May 20, 1937, to take effect on June 30, 1937, after it had been considered in meetings of the General Joint Committee and in conference with the General Manager and Personnel Manager of

the Company. The provisions for the payment of compensation to representatives on the Committee by the Shipbuilding Company, and for the appointment of representatives of the company on the Committee were eliminated. Two features were retained which have given rise to considerable discussion in this case, that is, the provisions in Article VI of the plan that the action of the Committee "shall be final and become effective upon agreement by the Company," and the provision in Article IX that the plan may be amended by a vote of two-thirds of the Committee, which amendments shall be in effect at the time specified by the Committee, "unless disapproved by the company within fifteen days after their passage."

The Shipbuilding Company and the Employees' Representative Committee assert that the provisions of Articles VI and IX were understood by them to apply to matters pertaining to the rights of the company under the plan, and were not intended to affect or restrict the independence of the committee in its capacity as a representative of the men. The Board on its part contends that the plan clothes the company with power in each instance to veto every proposal adopted by



the committee, and every proposed amendment to the plan itself. In our opinion, the view of the Shipbuilding Company and the Employees' Committee is more nearly correct, and it is of significance that in the actual operation of the plan, the provisions objected to have never been invoked by the company. The controversy, however, is no longer of importance, since both of the provisions have now been eliminated from the plan. During the argument of the case in this court, counsel were invited to discuss the propriety of a modification of the order of the Board so as to require the elimination of the provisions objected to, rather than a disestablishment of the organization. Counsel for the intervening organization stated that on its behalf he had unsuccessfully requested the Board to advise him what changes in its opinion would render the plan free from objection. Counsel for the Board requested the privilege of filing additional 1521 briefs, and this privilege was accorded to all parties. We learn, from the briefs filed in reply to the Board's supplemental brief, that Articles VI and IX have been amended by striking therefrom the provisions to which objections has been lodged.

When all of the circumstances of the case are considered, including not only the findings in the Board's opinion, but also the additional undisputed facts above set out, the inference that the Employees' Representative Committee "is still the creature of the company," to use the language of the Board, cannot in our opinion be reasonably drawn. It was certainly not reprehensible for the men to confer with the management when important changes were to be made in a plan, lawful in its inception, that had served long and successfully to foster peaceable relations and satisfactory working conditions in the plant; and there is no reason to doubt the sincerity of the declaration in the preamble of the revised plan that the purpose was to ensure the employees of the company full freedom in self organization and in the designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment. Consequently, there is no reasonable ground upon which the disestablishment of the organization of the men can be sustained. The National Labor Relations Act was designed to deal with the actualities of industrial life in this country, and to promote peace in relations between employer and employees by securing to employees the right, too frequently denied in the past, to organize and bargain collectively, with complete freedom and independence, through representatives of their own choosing. The purpose of the Act will not be served by destroying an organization that is without doubt the chosen representative of the great majority of the employees, even though it may be thought that their decision to restrict their spokesmen to American born fellow workmen is unwise. To deny them this right is to ignore the express command of the statute.

1522 It was in accord with the duty of the Board as a prosecuting agency for the enforcement of the law to take note of those features of the plan that involved participation by the company in



the administration of the organization and persisted after the enactment of the statute; and that duty also justified a critical examination of the revised plan to ascertain whether there was still danger of interference on the part of the employer. But it was also important to take cognizance of the undoubted service that the organization had previously rendered to men and management alike, and of the insistence of the men upon the preservation of their organization, and to note their sincere desire to eliminate in form as well as in substance every opportunity of the employer to a future share in the administration. That has now been accomplished and there is no longer any basis for the conclusion that the present plan is incapable of serving as a sincere representative of the employees for the purpose of collective bargaining.

The order of the Board should be enforced in its negative provisions 1 (a) and (b) that the Shipbuilding Company cease and desist from dominating or interfering with the administration of the Employees' Representative Committee or the formation or administration of any other labor organization of its employees, and from contributing to the support of the Representative Committee, and also from in any other manner interfering with, restraining or coercing its employees in the exercise of the right of self organization, &c.; and also in the affirmative provisions, 2 (b), (c), and (d) requiring the posting and maintaining of notices of the order throughout the plant. Such an order is justified under *Labor Board v. Greyhound Lines*, 303 U. S. 261, 271, even though, as appears in this case, the order has already been partly obeyed. But the provisions of Section 2 (a) of the order, which requires that all recognition of the Employees' Representative Committee be withdrawn and  
1523 that the Committee be disestablished, should be eliminated.

A decree will be signed directing the enforcement of the order of the Board, with the elimination of Section 2 (a) therefrom.  
Modified.

#### *Opinion*

PARKER, Circuit Judge, Concurring in Part and Dissenting in Part: I concur in so much of the opinion of the Court as holds that the Board had jurisdiction to enter the order here in controversy and that its cease and desist provisions and section 2 (b), (c), and (d) of its affirmative provisions should be enforced. I dissent from the holding that section 2 (a) should not be enforced.

The Court properly sustains the Board in the finding that petitioner has been guilty of dominating and interfering with the Employees' Representative Committee in contravention of the Act and enforces the cease and desist provision of the order for that reason. Whether, upon this finding, petitioner should be required to withdraw recognition from the committee and disestablish it as a bargaining agency was an administrative matter committed by Congress to the sound discretion of the Board; and the Court is not authorized to substitute its discretion with regard thereto for that of the Board.

National Labor Relations Board v. Pennsylvania Greyhound Lines, 303 U. S. 261, 271; National Labor Relations Board v. Pacific Greyhound Lines, 303 U. S. 272, 275. Only where there is a departure from law, action without substantial evidence to justify it or action so arbitrary and unreasonable as to amount to an abuse of discretion, is the Court justified in refusing enforcement of an order entered by the Board in exercise of the power entrusted to it by

Congress. When the Court enforces the cease and desist provisions of the order, it recognizes that the finding of unfair labor practices was based upon substantial evidence and that some action by the Board was warranted by law. I do not think that, in the light of that finding, the portion of the order disestablishing the bargaining agency can be condemned as an abuse of discretion.

The finding of the Board that there was domination of the committee by the company prior to the 1937 change in the plan, was not based upon technical or trivial matters, but upon a showing of domination of the clearest character. As originally adopted in 1927 the plan provided that petitioner should appoint a number of representatives equal to the number elected by the employees to sit on committees with the latter and negotiate with petitioner in behalf of the employees. As no action could be taken by the committees except by vote of a majority, this gave the representatives of petitioner power to paralyze any movement even for the presentation of demands by the employees. It is suggested that the representatives appointed by petitioner were to bargain with the representatives of the employees; but this is negated by the fact that provision was made for a company representative to perform this function, and that no action of the committees was to have any binding effect unless approved by the president of petitioner. No change in the plan could be made except by a two-thirds vote and with the approval of petitioner's president. In addition to this, petitioner paid each of the representatives at one time \$100.00 and at another \$60.00 per year for service in that capacity, it paid the secretary of the committee \$5.00 per month for his service in that capacity, and it defrayed all expenses of the committee, such as printing of ballots, printing of plan of organization and the like.

In the light of this history of the plan, the Board, I think, was thoroughly justified in concluding that the 1937 change in the plan would not remove the dominating influence of the company obtained through the preceding ten-year period. The committee was an established institution functioning in accordance with techniques developed through years of company domination. It was probably too much to hope that by a mere change in the plan it would change its character, rid itself of company influence and become a free bargaining agency such as the Act contemplates. Whether it could do so or not, was a matter for the Board to determine in the discharge of its administrative function; and the Board may well have concluded that only by disestablish-

ing the committee as a bargaining agency and starting anew could free and untrammelled action on the part of the employees be secured. As said by the Supreme Court in the Pennsylvania Greyhound Lines case, *supra*:

"Section 10 (e) declares that the Board's findings of fact 'if supported by evidence, shall be conclusive.' Whether the continued recognition of the Employees Association by respondents would in itself be a continuing obstacle to the exercise of the employees' right of self-organization and to bargain collectively through representatives of their own choosing, is an inference of fact to be drawn by the Board from the evidence reviewed in its subsidiary findings. See *Swayne & Hoyt v. United States*, 300 U. S. 297."

And what was said by the Supreme Court in the very recent case of *Consolidated Edison Co. v. National Labor Relations Board* — U. S. —, 59 S. Ct. 206, is apposite, viz:

"The power to command affirmative action is remedial, not punitive, and is to be exercised in aid of the Board's authority to restrain violations and as a means of removing or avoiding the consequences of violation where those consequences are of a kind to thwart the purposes of the Act. *The continued existence of a company union established by unfair labor practices or of a union dominated by the employer is a consequence of violation of the Act whose continuance thwarts the purposes of the Act and renders ineffective any order restraining the unfair practices.*" [Italics supplied.]

1526 Where there is evidence in the record to sustain the findings and order of the Board, I do not think that it is within our power to consider whether other findings are not also supported by the record, which, if made, might justify different action. The making of findings and determination of administrative action thereon, as heretofore stated, is a matter for the Board and not for us. Our right to make findings from the record in cases coming to us from the Labor Board is no broader than in cases coming from the Board of Tax Appeals; and with respect to our power in the latter class of cases the Supreme Court, in the case of *General Utilities Co. v. Helvering*, 296 U. S. 200, 206, said: "Recently (April 1935) this court pointed out: 'The Court of Appeals is without power on review of proceedings of the Board of Tax Appeals to make any findings of fact.' 'The function of the court is to decide whether the correct rule of law was applied to the facts found; and whether there was substantial evidence before the Board to support the findings made.' 'If the Board has failed to make an essential finding and the record on review is insufficient to provide the basis for a final determination, the proper procedure is to remand the case for further proceedings before the Board.' 'And the same procedure is appropriate even when the findings omitted by the Board might be supplied from examination of the records.' *Helvering v. Rankin*, 295 U. S. 123, 131, 132."

The case at bar furnishes good illustration of the wisdom of this rule. The Board found that "the provisions of the plan as revised, no less than the manner of its revision, indicate that it is still the creature" of the employer, resting this conclusion upon the facts as found by it in detail and set forth in the majority opinion. In considering other facts not mentioned by the Board, because doubtless deemed immaterial to the issue, the Court is without the benefit of the finding which the Board might have made with respect to these facts had it considered them in connection with other facts 1527 appearing in the record and bearing upon the same matters.

Thus, along with the fact that under the plan the employees vote for representatives without interference on the part of the company, the Board would doubtless have considered the fact that under the agreement for collective bargaining which the plan embodies the employees are limited in their choice of representatives to employees of the company, to the exclusion of an outside union as a bargaining agent. Along with the fact that the company is willing to negotiate with the committee, the Board would doubtless have considered the fact that the plan makes no provision for the meetings of employees or for instructing representatives as to their wishes, matters deemed material and expressly mentioned in the opinion in the Pennsylvania Greyhound Lines case (303 U. S. at 270).

The first of these matters is, to my mind, very material if we are to go behind the findings of the Board and consider the record. Section 7 of the National Labor Relations Act provides that "employees shall have the right \* \* \* to bargain collectively through representatives of their own choosing." 29 U. S. C. A. 157. Any plan or agreement which limits their choice of such representatives is contrary to the reason and spirit of the Act as well as violative of this section; and an agreement for collective bargaining which provides that the bargaining representatives shall be employees of the employer excludes the possibility of selecting an outside union as bargaining agent, and thus limits the employees in the freedom of choice which it was the purpose of the Act to guarantee. This does not mean, of course, that the employees may not select their fellow employees as representatives, nor does it mean that they may not select a committee or inside union of their fellow employees as a bargaining agency. What it does mean is that, in selecting their representatives, they must be free to select whom they will, and 1528 not be bound by any plan or agreement with their employer to limit their selection in such way as to exclude an outside union.

For the reasons stated, I am of the opinion that the order of the Board should be enforced as entered.



529 In United States Circuit Court of Appeals, Fourth  
Circuit

No. 4390

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY, A CORPORATION, AND EMPLOYEES' REPRESENTATIVE COMMITTEE OF THE NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY, INTERVENOR, PETITIONERS

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petition for Review of Order of the National Labor Relations  
Board

*Decree*

Filed and entered February 28, 1939

This cause came on to be heard upon the petitions of the Newport News Shipbuilding and Dry Dock Company, a corporation, and the Employees' Representative Committee of the Newport News Shipbuilding and Dry Dock Company, Intervenor, for review of a certain order, entered by the National Labor Relations Board on the 9th day of August 1938, in a proceeding before the said Board numbered C-470, entitled "In the Matter of Newport News Shipbuilding and Dry Dock Company and Industrial Union of Marine and Shipbuilding Workers of America"; the answer of the National Labor Relations Board and request for enforcement, and upon the transcript of the record in said proceedings certified and filed in this court; and the said cause was argued by counsel.

On consideration whereof, it is ordered, adjudged, and decreed this day of February 1939, by the United States Circuit Court of Appeals for the Fourth Circuit, that the said order of the  
530 National Labor Relations Board, be, and the same is hereby, modified so as to read as follows:

"Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Newport News Shipbuilding and Dry Dock Company, and its officers, agents, successors, and assigns, shall:

"1. Cease and desist from:

"(a) Dominating or interfering with the administration of Employees' Representative Committee of the Newport News Shipbuilding and Dry Dock Company, also known as Representation of Employees,



or the formation or administration of any other labor organization of its employees, and contributing support to Employees' Representative Committee of the Newport News Shipbuilding and Dry Dock Company; also known as Representation of Employees, or to any other labor organization of its employees;

"(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act.

"2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act; :

"(a) Post immediately in conspicuous places throughout its plant copies of this order;

"(b) Maintain such posted notices for a period of at least thirty (30) consecutive days from the date of posting; and

531 "(c) Notify the Regional Director for the Fifth Region in writing within ten (10) days from the date of this order what steps the respondent has taken to comply herewith.

"And it is further ordered that the complaint, insofar as it alleges that the respondent had discriminated in regard to the hire and tenure of employment of John M. Darling, Jr., William H. Bell, Melvin L. Anderson, E. B. Wright, and Jesse Dillon be and it hereby is dismissed."

And it is further ordered, adjudged, and decreed by the United States Circuit Court of Appeals for the Fourth Circuit that the said order of said Board, as so modified, be enforced, and that the said Newport News Shipbuilding and Dry Dock Company, a corporation, abide by and perform the said order as so modified.

JOHN J. PARKER,

*United States Circuit Judge.*

ELLIOTT NORTHCOTT,

*United States Circuit Judge.*

MORRIS A. SOPER,

*United States Circuit Judge.*

FEBY. 27, 1939.

I dissent from so much of the foregoing decree as modifies the order of the National Labor Relations Board, being of opinion that the order of the Board as entered should be enforced by the Court. I have signed the Decree because I concur in the view that the order as modified should be enforced. See my opinion filed herewith concurring in part and dissenting in part.

2/27/39.

JOHN J. PARKER,

*United States Circuit Judge.*

[File endorsement omitted.]

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In Supreme Court of the United States

*Stipulation Re Printing of the Record*

Filed Sept. 13, 1939

It is hereby stipulated and agreed by and between the Solicitor General on behalf of the National Labor Relations Board and counsel for the respondent and the intervenor that the record to be printed by the Clerk of the Supreme Court of the United States shall consist of the following, and shall be printed in approximately the following order:

1. The charge, dated June 12, 1937.
2. The complaint and notice of hearing, dated June 18, 1937.
3. Answer of respondent.
4. Motion to Intervene filed by Employees' Representative Committee.
5. Page 1 of Transcript.
- 5a. Testimony of Philip H. Van Gelder, transcript: P. 68, lines 25, incl.
- 5b. Testimony of Jesse H. Dillon, transcript: P. 191, lines 4-12, incl. P. 194, lines 20-22, incl. P. 343, lines 23-25, incl. P. 344, lines 7, incl.
6. Testimony of William H. Bell, transcript: P. 226, lines 1-25, incl. P. 229, lines 10-25, incl. P. 236, lines 13-15, incl. P. 248, lines 22-25, incl. P. 248, line 1 through to page 256, line 9, incl. P. 280, lines 20-25, incl. P. 281, lines 1 through page 283, line 1, incl. P. 284, lines 15-25, incl. P. 285, lines 13 through page 293, line 2, incl. P. 294, lines 1 through page 298, line 6, incl. P. 302, lines 16-25, incl. P. 303, lines 7 through page 304, line 1. P. 305, lines 2-25, incl. P. 306, lines 1-25, incl. P. 307, lines 1-4, incl.
- 35 P. 323, lines 9-25, incl. P. 324, line 22, through page 332, line 8, incl. P. 334, line 6, to p. 336, line 7, incl. P. 340, line 21, through page 342, line 21, incl.
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8a. Testimony of Stanley S. Evans, Transcript: P. 879, lines 4-18, incl. P. 896, line 16, to p. 897, line 14, incl.

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9. Testimony of Paul Scarborough, Jr., Transcript, p. 914, line 12, to p. 925, line 20, incl.

9a. Testimony of Hector Roscoe Weston, Transcript: P. 969, line 9, to page 970, line 19, incl.

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9c. Testimony of Edwin Hudson Smith, Transcript: P. 973, line 9, to page 974, line 13, incl.

10. Testimony of Edward J. Robeson, Jr., Transcript: P. 991, line 4, to p. 993, line 9, incl. P. 1009, line 20, to p. 1011, line 21, incl. P. 1020, lines 11 to 19, incl. P. 1023, line 13, to page 1027, line 2, incl. P. 1039, lines 20-22, incl. P. 1041, line 2, to p. 1042, line 8, incl. P. 1044, line 22, to p. 1051, line 22, incl.

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16. Testimony of Solomon Travis, Transcript: P. 1210, line 8, to p. 1219, line 11, incl. P. 1223, line 5, to p. 1238, line 2, incl.

17. Testimony of Charles Boyd, Transcript, p. 1238, line 3, to p. 1244, line 19, incl.

18. Testimony of Claude Carter, Transcript: P. 1244, lines 20-23, incl. P. 1247, line 3, to p. 1249, line 18, incl. P. 1251, lines 24 and 25.

19. Testimony of Herbert Tighe, Transcript, p. 1252, line 3, to p. 1259, line 16, incl.

19a. P. 1259, line 21, to p. 1260, line 16. (Ferguson telegram.)

20. Board's Exhibit 1 K.

21. Board's Exhibit 11.

22. Board Exhibit 12.

23. Board Exhibit 13.

24. Board's Exhibit 14.

25. Board Exhibit 15.

26. Board Exhibit 16.

- 1537 27. Board Exhibit 18.
28. Respondent's Exhibit 9.
28. Intervenor's Exhibit 2.
29. Intervenor's Exhibit 4.
30. Intermediate Report except Part II (b).
31. Respondent's Exceptions to the Intermediate Report, printing only the introduction and exceptions numbered 32 to 52, inclusive.
32. Decision and Order of the Board.
33. Petition to Review filed by Company with Circuit Court of Appeals, 4th Circuit.
34. Answer to petition to review and request for enforcement filed by Board.
35. Supplemental Certificate of the National Labor Relations Board dated October 1, 1938, filed October 3, 1938.
36. Petition of Employees Representative Committee for leave to intervene in the Circuit Court of Appeals, 4th Circuit, with Exhibit A annexed.
37. Opinion and dissenting opinions in the Circuit Court of Appeals, 4th Circuit, dated February 28, 1939.
38. Decree of the U. S. Circuit Court of Appeals for the Fourth Circuit entered February 28, 1939.
39. Order granting certiorari.

ROBERT H. JACKSON,  
*Solicitor General.*  
FRED H. SKINNER,  
*Counsel for Respondent.*  
FRANK A. KEARNEY,  
*Counsel for Intervenor.*

13TH SEPTEMBER 1939.

1538 Supreme Court of the United States

*Order allowing certiorari*

Filed April 24, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] File No. 43,252. U. S. Circuit Court of Appeals, Fourth Circuit. Term No. 20. National Labor Relations Board, Petitioner vs. Newport News Shipbuilding & Dry Dock Company. Petition for a writ of certiorari and exhibit thereto. Filed March 22, 1939. Term No. 20 O. T. 1939

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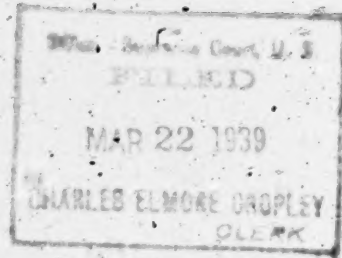


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In the Supreme Court of the United States

OCTOBER TERM, 1938

NATIONAL LABOR RELATIONS BOARD, PETITIONER

NEWPORT NEWS SHIPBUILDING & DRY DOCK  
COMPANY, A CORPORATION

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH  
CIRCUIT

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# In the Supreme Court of the United States

OCTOBER TERM, 1938

No. —

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

NEWPORT NEWS SHIPBUILDING & DRY DOCK  
COMPANY, A CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH  
CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fourth Circuit entered on February 28, 1939 (I R. 425-426),<sup>1</sup> granting, in part, a petition by the Newport

<sup>1</sup> Pursuant to a stipulation of counsel, the record on the petition in the present case consists of the transcript of record printed by the court below, the appendices to the briefs containing parts of the record relied on by each party and submitted by the respondent and the National Labor Relations Board in the Circuit Court of Appeals, and a type-written transcript of the entire record lodged with the Clerk. The printed transcript of record in the court below has been designated as Volume I and the appendices of the respondent and the National Labor Relations Board as Volumes II and III, respectively. In the event that the writ is granted, a record will be printed by the Clerk pursuant to stipulation of the parties.

News Shipbuilding & Dry Dock Company, a corporation, to set aside an order of the National Labor Relations Board issued against that company and denying, in part, a request by the National Labor Relations Board for enforcement of said order.

#### OPINIONS BELOW

The findings of fact, conclusions of law, and order of the National Labor Relations Board, (I.R. 13-29) are not yet officially reported. The opinion and dissenting opinion in the Circuit Court of Appeals (I.R. 413-425) are not yet officially reported.

#### JURISDICTION

The judgment of the Circuit Court of Appeals was entered February 28, 1939. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act.

#### QUESTION PRESENTED

Whether, upon findings that respondent has dominated and interfered with the formation and administration of a labor organization of its employees and contributed financial and other support thereto, and is dominating and interfering with the administration of said labor organization, all contrary to Section 8 (2) of the National Labor Relations Act, the National Labor Relations Board,



in addition to ordering respondent to cease and desist from such interference, properly required respondent to withdraw all recognition from said organization as a representative of its employees for purposes of collective bargaining, and completely to disestablish said organization as such representative.

#### STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C. Supp. III, Title 29, Sec. 151 *et seq.*) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: \* \* \*

\* \* \* \* \*

SEC. 10 (c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the

Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. \* \* \*

#### STATEMENT

Pursuant to a charge (II R. 1) filed with the Board by the Industrial Union of Marine and Shipbuilding Workers of America, a labor organization, the Board, by its regional director for the Fifth Region at Baltimore, Maryland, issued on June 18, 1937, a complaint and notice of hearing which were duly served upon petitioner (II R. 3-7). In addition to jurisdictional allegations, the complaint, so far as now material, alleged that petitioner had dominated, supported, and interfered with the formation and administration of the Employees' Rep-

The complaint also alleged that respondent had discharged seven of its employees in violation of Section 8 (3) of the Act (II R. 4-5). These allegations of the complaint were dismissed by the Trial Examiner with respect to three of the employees (II R. 269), and by the Board with respect to the remainder (I R. 29).

representative Committee of the Newport News Shipbuilding and Dry Dock Company, a labor organization (sometimes referred to as the Representation of Employees, but hereinafter termed "the Plan"),<sup>3</sup> and that thereby respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (2), and Section 2 (6) and (7), of the Act (II R. 6).

Respondent appeared specially and filed a motion to dismiss the complaint for lack of jurisdiction (II R. 8).<sup>4</sup> It also filed an answer (II R. 9-14) admitting in part the jurisdictional allegations of the complaint, and also admitting that, in cooperation with its employees, "it aided in putting into force and effect at its shipyard a plan of employee representation" (II R. 12), and that "it did lend its moral support and encouragement to the formation and continuation of said plan" (*id.*). It denied, however, that it had engaged in unfair labor practices within the meaning of the Act. Prior to the hearing the Employees' Representative Committee obtained, on motion, leave to intervene in

<sup>3</sup> The term "revised Plan" will be used to refer to this labor organization as it existed after the amendments in May 1937 (see pp. 10-11, *infra*).

<sup>4</sup> Before filing its motion to dismiss the complaint and its answer respondent sought in the United States District Court to enjoin the agents of the Board from proceeding with the case. The District Court's order dismissing the bill was affirmed by this Court. *Newport News Shipbuilding & Dry Dock Co. v. Schauffler*, 303 U. S. 54.

the proceeding, and filed an answer denying the allegations of the complaint (II R. 15-20).

A hearing was held from August 30 to September 8, 1937, before a Trial Examiner designated by the Board (I R. 14). Full opportunity to examine and cross-examine witnesses and to introduce evidence was afforded all the parties. On March 9, 1938, the Trial Examiner filed an intermediate report, finding that petitioner had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1), (2), and (3) of the Act, and recommending that petitioner cease and desist from such practices and take certain affirmative action to remedy them, including withdrawal of recognition from, and disestablishment of, the Plan as a representative of the employees (II R. 268-270). Exceptions were filed by respondent (II R. 270-274) and by the Committee; and on May 11, 1938, counsel for the respondent, the Committee, and the Union participated in oral argument before the Board, respondent also filing a brief. On August 9, 1938, the Board issued its findings of fact, conclusions of law, and order (I R. 13-29). The facts, as found by the Board, may be summarized as follows:

*Nature of respondent's operations.*—Respondent, a Virginia corporation, owns and operates at Newport News, Virginia, one of the most important shipyards in the United States (I R. 16, 18).

<sup>5</sup> See footnote 2, p. 4, *supra*.

Respondent there engages in the business of designing, constructing, overhauling, and repairing ships for the United States Navy and for foreign and domestic interests. It also builds water turbines (I R. 16). At the time of the hearing it employed about 5,500 persons (I R. 18).

The enterprise is dependent to a very substantial extent upon interstate commerce for its materials and supplies. Between January 1936 and August 1937 respondent purchased outside the State of Virginia approximately 90 percent of the \$13,000,000 worth of materials used in its business. These out-of-state purchases included all of the steel and coal used, more than 82 percent of the lumber, and 87 percent of the remaining materials (I R. 16-17).

Although the greater part of respondent's production consists of ships built for the United States Navy, from June 1934 to the date of the hearing it had under construction three merchant vessels at contract prices aggregating \$1,020,000 (I R. 17). A considerable portion of respondent's business also consists of repairing and overhauling vessels of both foreign and domestic registry. Between July 1935 and August 1937 petitioner serviced 322 vessels at a billing price of over \$3,000,000 (I R. 17). Included were 43 ships of foreign registry and 279 of American registry, all of the former and a substantial number of the latter being engaged in interstate or foreign commerce (I R. 18).



*The unfair labor practices.*—The Plan dates from the year 1927, when it was first put into effect by respondent in cooperation with its employees. The purposes of the Plan were stated in its preamble (I R. 19):

In order to give the employees of the Company a voice in regard to the conditions under which they labor, and to provide an orderly and expeditious procedure for the prevention and adjustment of any future differences, and to anticipate the problem of continuous employment, a method of representation of employees is to be established.

By this original Plan (II R. 247-258) provision was made for the annual election by the employees of 21 white and 7 colored representatives, who were to be paid \$100 annually by respondent for serving in that capacity. Supervisory employees were ineligible to vote or serve as representatives. Five committees, each composed of five elected representatives and not more than five representatives selected by the management from among the employees, administered the Plan. The Plan also provided for a Management's Representative, who was "to keep the Management in touch with the representatives, and represent the Management in negotiations with the representatives, their officers and Committees." A provision for arbitration of differences became operative only on the concur-

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<sup>6</sup> The Board's decision erroneously states that there were four committees (I R. 19).

rence of respondent's president. Amendment of the Plan required a vote of either two-thirds of the full membership of the Rules Committee (including representatives selected by the management), or a majority of 'all the employees' and the management representatives at an annual conference. No provision was made for dues. (I R. 19-20.)

The Plan was revised in 1929, 1931, 1934, 1936, and 1937. The 1931 revision (II R. 239-246), however, was maintained, in substance, until 1937. Under it: (1) one white and one colored employee representative was elected by the employees in each department and division, the management appointing an equal number of management representatives (see II R. 239, 243); (2) the annual remuneration paid elected employees was reduced to \$60 (see II R. 240); (3) the five governing joint committees were supplanted by a General Joint Committee, composed of all elected and management representatives (a majority of each class constituting a quorum) and empowered to take final action, subject to the approval of the President of the company, upon all subjects referred to it by any elected or management representatives or by the Management's Representative (see II R. 243-244); (4) an Executive Committee was created composed of five elected employee representatives and five management representatives (see II R. 244); (5) nominations and elections were to be ar-

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<sup>7</sup> See footnote 6, p. 8, *supra*.

ranked for by the Management's Representative, "but in so far as possible conducted by the employees themselves" (see II R. 241); (6) the provision for arbitration of grievances upon consent of respondent's president was eliminated in favor of a provision that if the Executive Committee failed to settle the matter "the President of the Company shall be notified" (see II R. 245-246); (7) the old amendment procedure was eliminated and amendments could be made by a two-thirds vote of the entire General Joint Committee, "when approved by the President of the Company" (see II R. 246).

The Board's finding was that from the Plan's inception until its revision in 1937 respondent dominated, assisted, and interfered with the formation and administration of the Plan (I R. 20).

The 1937 revision occurred in May, shortly after this Court had sustained the constitutionality of the Act, but 22 months after the effective date of the Act. It originated in the General Joint Committee, one-half of the members of which were management representatives, and was referred for suggestions to the similarly constituted Executive Committee and to the elected representatives separately. The personnel manager and the general manager of respondent each took an active part in the revision of the Plan (I R. 21). On May

The Board's decision erroneously states that the nominations and elections were arranged by the management representatives (see I R. 20).

20, 1937, after the Management's Representative announced that the revision was acceptable to respondent, the revised Plan was adopted by the General Joint Committee (I R. 20-21).

The Board's finding was that since the procedure followed was that of amendment of the existing plan—a procedure which required respondent's consent—the revision could not possibly be considered the independent action of the employees or of their elected representatives (I R. 21). The Board also found that the provisions of the revised Plan made it still the creature of respondent. The revised Plan (II R. 198-209) eliminated the compensation paid to elected representatives (see II R. 202), and substituted for the General Joint Committee and the Executive Committee a single Employees' Representative Committee, composed of representatives elected by the employees (see II R. 206). The revised Plan, however, provided that the action of that Committee "shall be final, and become effective upon agreement by the Company" (see II R. 207), and that any article of the Plan may be amended by two-thirds of the entire membership of the Committee "unless disapproved by the Company within 15 days after their passage" (see II R. 209). The procedure for settling grievances concludes with presentation of the grievance to the respondent's personnel manager or general manager (see II R. 208-209). As thus revised, the Plan has been in operation at respondent's shipyard since June 30, 1937. It was

printed in booklet form at respondent's expense, and distributed by respondent's supervisors. Copies of the minutes of each meeting held by the Committee are duplicated at respondent's expense and on respondent's stationery, and distributed through respondent's mailing service, one copy being regularly sent to respondent's personnel manager (I R. 22-23).

The Board found that respondent had dominated and interfered with the formation and administration of the Plan, and had contributed support to it (I R. 23). The Board also found that respondent had power under the revised Plan to stifle independent action of the Committee, and that the Committee is incapable of serving respondent's employees as their genuine representative for the purposes of collective bargaining (I R. 23).

Upon these findings the Board concluded that respondent had engaged and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (2), and Section 2 (6) and (7) of the Act. It thereupon ordered respondent (I R. 28-29) to cease and desist from such unfair labor practices, to withdraw all recognition from the Plan as a representative of its employees, completely to disestablish the Plan as such representative, and to post appropriate notices. The Board dismissed its complaint with respect to violations of Section 8 (3) of the Act (see footnote 2, p. 4, *supra*).



On August 18, 1938, respondent, pursuant to Section 10 (f) of the Act, filed with the Circuit Court of Appeals for the Fourth Circuit its petition to review the foregoing order (I R. 1-11). On August 29, 1938, the Board filed an answer and request for enforcement of its order (III R. 1-7). On February 28, 1939, the court directed the enforcement of the order with the elimination therefrom of paragraph 2 (a), requiring withdrawal of recognition from and disestablishment of the Plan as a representative of the employees. Judge Parker dissented from that part of the decision directing the elimination of said paragraph 2 (a). The full court held that the Board had jurisdiction over respondent (R. 415), and also agreed with the Board's conclusion that respondent had dominated and interfered with and contributed support to the Plan in violation of Section 8 (2) of the Act, and ordered enforcement of the cease and desist provisions of the order directed to those violations (R. 421). With respect to paragraph 2 (a), however, the majority, relying on various assertions and evidence as to which no findings had been made by the Board, concluded that "When all of the circumstances of the case are considered \* \* \* the inference that the [Plan] \* \* \* is still the creature of the company \* \* \* cannot in our opinion be reasonably drawn" (R. 420). Judge Parker was of opinion that the court improperly considered facts not found by the Board; that the majority, in eliminating para-

graph 2 (a), had improperly substituted its discretion for that of the Board, which had been properly exercised; and that the order should be given full enforcement (R. 422-425).

#### **SPECIFICATION OF ERRORS TO BE URGED**

The Circuit Court of Appeals erred:

1. In holding that there was "no reasonable ground" upon which the Board's order requiring respondent to withdraw recognition from and disestablish the Plan as a representative of its employees could be sustained.

2. In refusing to enforce and in setting aside paragraph 2 (a) of the Board's order.

#### **ARGUMENT**

##### **I**

THE DECISION BELOW IS IN PROBABLE CONFLICT WITH  
DECISIONS OF THIS COURT

The court below upheld the conclusion of the Board that respondent had been guilty of violations of Section 8 (1) and (2) of the Act in dominating, interfering with, and contributing support to the Plan, and directed enforcement of those portions of the Board's order requiring cessation of such practices. The majority refused, however, to enforce paragraph 2 (a) of the order, which, as affirmative relief found by the Board to be necessary to effectuate the policies of the Act, requires respondent to withdraw all recognition from and completely to disestablish the Plan as a representative of its employees for the purposes of collective bar-

gaining.<sup>9</sup> That conclusion we believe to be in conflict with decisions of this Court in which, on facts similar to those here presented, the Court has denied the power of the Circuit Courts of Appeals to substitute their discretion for that of the Board, and has directed the enforcement of similar disestablishment orders. *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 268; *National Labor Relations Board v. Pacific Greyhound Lines, Inc.*, 303 U. S. 272; *National Labor Relations Board v. Fansteel Metallurgical Corp.*, No. 436, decided February 27, 1939.

The findings of the Board, which have been summarized in the Statement, *supra*, show that the Plan was put into effect in 1927 by respondent in cooperation with its employees. As originally constituted it was entirely the creature of respondent. Respondent paid representatives elected to represent the employees for their services in that capacity (I R. 19). Respondent had an equal voice with these "employee representatives" on all governing committees (I R. 19). And respondent could effectively prevent any amendment of the Plan (*id.*).

<sup>9</sup> Paragraph 2 (a), although affirmative in form, is negative in effect. It simply directs non-recognition. The term "disestablish" is used in its dictionary sense—"to deprive of fixed or established state or character; specifically, to withdraw state patronage, support, or exclusive recognition from; as to disestablish a church." *New Standard Dictionary of the English Language* (Funk & Wagnalls, 1935).

In the other ways summarized in the Statement, *supra*, respondent lent its prestige and support to the Plan with the design, and inevitable effect, that the Plan became established and entrenched as the sole representative of the employees in respondent's yard.

As the Board found (I R. 21), the Plan never has lost its original character as an employer dominated labor organization. A revision in 1931 reduced the pay of employee representatives from \$100 to \$60 (I R. 20), and changed the governing committees from five to two. (*id.*), but left respondent with an equal voice with the employee representatives on each committee (*id.*). Respondent was given a double check on amendments: by its equal representation on the General Joint Committee it could easily prevent the required two-thirds vote of the entire membership of that Committee, and, if that were insufficient, respondent's president could simply withhold his approval (*id.*).

In May 1937, after the Plan had been in existence for ten years, respondent purported to bring it into harmony with the requirements of the Act. When the attempt was finally made, both the revision procedure utilized and the results obtained showed how little the Plan can be said to be the free choice of respondent's employees. The procedure was one of amendment of the Plan, which insured respondent's complete control over all changes (I R. 21). Indeed, respondent went even further;

both its general manager and its personnel manager actively participated in drafting the amendments finally submitted and adopted (*id.*). Moreover, although the revised Plan eliminated the provisions for remuneration to employee representatives, and eliminated the representation of the respondent on the governing committee (*id.*), an effective check on committee activity was retained through the provision that action by the governing committee should become effective only "upon agreement by the Company" (*id.*), and by the provision that amendments could be had only if company disapproval was not expressed within fifteen days (*id.*). The miscellaneous means by which respondent has impressed upon the employees a realization that the employer's power, prestige, and favor are liberally exercised on behalf of the Plan, such as respondent's printing of the minutes on its own stationery, have remained the same since the Plan's establishment.

On these findings, the conclusion of the majority of the court below that there is "no reasonable ground" of support for the finding of the Board that the Plan could not serve as a genuine bargaining representative is squarely opposed to the decision in *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261. In that case officers of the employer had been active in promoting and in preparing the details of the labor organization; adjustment of grievances was under the complete control of the company; amendments



were controlled by a requirement of a two-thirds vote in a body in which employer and employee representatives were equal in number. The Court concluded (p. 271):

In view of all the circumstances the Board could have thought that continued recognition of the Association would serve as a means of thwarting the policy of collective bargaining by enabling the employer to induce adherence of employees to the Association in the mistaken belief that it was truly representative and afforded an agency for collective bargaining, and thus to prevent self-organization. The inferences to be drawn were for the Board and not the courts.

\* \* \* There was ample basis for its conclusion that withdrawal of recognition of the Association by respondents, accompanied by suitable publicity, was an appropriate way to give effect to the policy of the Act.

The decision below also conflicts even more markedly with *National Labor Relations Board v. Pacific Greyhound Lines, Inc.*, 303 U. S. 272. There a similar disestablishment order was upheld as a proper exercise of the discretion committed to the Board, notwithstanding that disestablishment had been ordered solely upon the ground that a record of past domination and interference by the employer indicated that a mere order to cease and desist "would not set free the employee's impulse to seek the organization which would effectively represent him" (303 U. S. at p. 275.) Here, in addition, the Board found a structural incapacity which made disestablishment more clearly impera-

tive. The decision below also conflicts with *National Labor Relations Board v. Fansteel Metallurgical Corp.*, No. 436, decided February 27, 1939, in which disestablishment was ordered solely upon findings of what this Court termed the "promotion efforts" of the employer. See also *Consolidated Edison Co. v. National Labor Relations Board*, Nos. 19, 25, decided December 5, 1938.<sup>10</sup>

We submit that it is impossible to reconcile the decision of the majority in the court below with these decisions. On the other hand, the dissenting opinion reveals a realistic appreciation of labor relations and of the purposes of the present Act which is in complete harmony with these decisions of this Court. Judge Parker stated (R. 423):

In the light of this history of the plan, the Board, I think, was thoroughly justified in concluding that the 1937 change in the plan would not remove the dominating influence

<sup>10</sup> See also *National Labor Relations Board v. J. Freezer & Son, Inc.*, 95 F. (2d) 840 (C. C. A. 4th); *National Labor Relations Board v. Wallace Manufacturing Co.*, 95 F. (2d) 818 (C. C. A. 4th); *National Labor Relations Board v. Eagle Manufacturing Co.*, 99 F. (2d) 930 (C. C. A. 4th); *Virginia Ferry Co. v. National Labor Relations Board*, decided January 9, 1939 (C. C. A. 4th); *National Labor Relations Board v. The Falk Corp.*, decided March 7, 1939 (C. C. A. 7th); *National Labor Relations Board v. Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th), certiorari denied, 304 U. S. 575, 99 F. (2d) 593, certiorari denied, No. 594, March 6, 1939; *National Labor Relations Board v. Oregon Woolled Co.*, 96 F. (2d) 193 (C. C. A. 9th); *National Labor Relations Board v. American Potash & Chemical Corp.*, 98 F. (2d) 488 (C. C. A. 9th), certiorari denied, No. 594, February 27, 1939.

of the company obtained through the preceding ten-year period. The committee was an established institution functioning in accordance with techniques developed through years of company domination. It was probably too much to hope that by a mere change in the plan it would change its character, rid itself of company influence, and become a free bargaining agency such as the act contemplates. Whether it could do so or not was a matter for the Board to determine in the discharge of its administrative function; and the Board may well have concluded that only by disestablishing the committee as a bargaining agency and starting anew could free and untrammelled action on the part of the employees be secured.

At most, the majority opinion pays only formal heed to the principles established by this Court. Actually, it rejects a conclusion of the Board, which finds substantial support in the evidence, that withdrawal of recognition from the Plan and its disestablishment as a collective-bargaining agency were necessary to effectuate the policies of the Act. The result is that the court has substituted its discretion for that of the Board in a case where the Board's discretion was properly exercised.

In addition, the majority opinion relies upon certain assertions and upon certain evidence, as to which no findings were made by the Board, to distinguish the present case from those heretofore decided by this Court. Apart from the obvious answer that the court was not warranted in making

findings of fact not made by the Board (*General Utilities and Operating Co. v. Helvering*, 296 U. S. 200, 206; *Helvering v. Rankin*, 295 U. S. 123, 131), the court's reliance upon those facts indicates a misconception of the principles stated by this Court. Those facts did not warrant the court in holding that the Board's findings do not find reasonable support in the evidence or that its discretion was improperly exercised.

For example, under the decisions of this Court it is completely irrelevant that, pursuant to a suggestion of the court during the argument below, the revised Plan may have been further revised after the argument<sup>11</sup> to eliminate those provisions giving respondent a veto power over any final action of the Employees Committee and over any amendment to the Plan itself. The propriety of the order does not depend simply upon whether the formal provisions of the Plan were such that it could function as a genuine representative; this would only be relevant assuming a freedom of choice in the employees, which they have never had in respondent's plant. *National Labor Relations Board v. Pacific Greyhound Lines, Inc.*, 303 U. S. 272; *Consolidated Edison Co. v. National*

<sup>11</sup> The court seems also to have departed from the rule, stated by this Court in *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, in enforcing an order similar to that here in question (p. 271):

"But an order of the character made by the Board, lawful when made, does not become moot because it is obeyed or because changing circumstances indicate that the need for it may be less than when made."

*Labor Relations Board*, Nos. 19, 25, decided December 5, 1938; *National Labor Relations Board v. Fansteel Metallurgical Corp.*, No. 436, decided February 27, 1939. It is simply contrary to reason to urge that a labor organization, the formation and administration of which have been interfered with and dominated by an employer for over ten years, can suddenly become a free and independent agent by a mere change in form, even if the acts of interference and domination have ceased. Without doubt respondent, by lending to the Plan its support and prestige, not only at the outset but throughout its existence, has guided, influenced, and formed the Plan into an instrument of its own policy. Without doubt respondent, by recognizing the Plan, has been a powerful, if not irresistible, factor in securing adherents to it: *Texas & New Orleans R. Co. v. Brotherhood of Railway Clerks*, 281 U. S. 548. Without doubt, the attitude of the employees toward it as respondent's instrument has been definitely shaped. Enforcement of only the cease and desist provisions of the order allows respondent to reap the benefit of its unquestioned violation of Section 8 (2) of the Act in the past—that is, exclusive representation of its employees by a labor organization responsive to its wishes. Irrespective of the Plan's formal characteristics at the present time, it is necessarily true that only by withdrawal of the recognition which has been accorded to the Plan can there be even a partial restoration of the freedom of choice in selection of a bargain-



ing representative which would have obtained had the statute not been violated.

The same departure from the principles established by this Court is revealed in the emphasis placed by the majority opinion below upon other evidence not deemed significant by the Board under the decisions of this Court and therefore not included in its findings—the continued participation in the elections held under the Plan of a large majority of the employees, and the alleged desire of the employees to continue the Plan, as evidenced by a referendum. Even if taken at face value, giving weight to this evidence assumes a freedom of choice which does not exist—it does not indicate what the choice of the employees would be apart from the ten-year history of domination, interference, and support which has established the Plan in its present commanding position. What that choice would have been can never be certain, but only by a withdrawal of recognition from the Plan can conditions be restored as nearly as possible to what they would have been had respondent not been guilty of long-continued violations of the Act. Only in this manner can circumstances permitting a free choice be established.

Finally, the decisions of this Court make it clear that no reliance can be placed upon the continued peaceful relations between respondent and its employees referred to in the majority opinion. Absence of industrial strife produced by successful employer control of employees' self-organization is

not the peace which Congress intended to achieve by this Act. The Act, and the decisions of this Court under it, make it clear beyond question that a forced truce resulting from unfair labor practice is not, and cannot be, regarded as a satisfactory substitute for the stable peace which results from the adjustment of differences by negotiation between an employer and the freely designated representatives of his employees. Reliance by the court upon the absence of industrial strife between respondent and its employees flies in the face of the Congressional findings and challenges the very basis of the Act.

We submit, therefore, that the decision of the court below conflicts, in several important respects with the applicable decisions of this Court.

## II

THE COURT BELOW HAS ERRONEOUSLY DECIDED A QUESTION OF GREAT IMPORTANCE IN THE FUTURE ADMINISTRATION OF THE ACT

The decision below, unless reviewed by this Court may lead to serious confusion in the proper administration of the Act. Other Circuit Courts of Appeals may be inclined to follow the decision below, not only in relying upon assertions not in the record as to changes made subsequent to the order of the Board (see pp. 20-21, *supra*), but also in relying upon facts which are irrelevant to the proper determination of questions similar to that here presented (see pp. 21-24, *supra*). There are a large number of cases in which similar orders of dis

establishment have been issued by the Board, some of which may go to the courts, including the court below, and there are other cases awaiting decision before both the Board and the courts. Obviously, orders for affirmative relief of this character are of the utmost importance in preventing the continued recognition of employer-inspired labor organizations which can serve only to thwart the genuine collective bargaining contemplated by the Act. Such orders are essential to free employees from the effects of long-continued unfair labor practices, and to permit the free choice guaranteed by Section 7. The appropriate remedying of violations of Section 8 (2) is essential to the maintenance of the Act's basic principles. Faced with the decision below, the Board cannot proceed intelligently and consistently in the disposition of these cases.

#### CONCLUSION

The decision below is in conflict with applicable decisions of this Court. It is of importance in the future administration of the Act that it be reviewed. Wherefore, we respectfully submit that this petition for a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Fourth Circuit should be granted.

ROBERT H. JACKSON,  
*Solicitor General.*

CHARLES FAHY,  
*General Counsel,*  
*National Labor Relations Board.*

MARCH 1939.



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No. 20

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*In the Supreme Court of the United States*

OCTOBER TERM, 1939

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NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

NEWPORT NEWS SHIPBUILDING & DRY DOCK COM-  
PANY, A CORPORATION

---

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE FOURTH CIRCUIT

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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# In the Supreme Court of the United States

OCTOBER TERM, 1939

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No. 20

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

NEWPORT NEWS SHIPBUILDING & DRY DOCK COMPANY, A CORPORATION

---

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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## OPINIONS BELOW

The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 192-203) are reported in 8 N. L. R. B. 866. The opinion and dissenting opinion in the Circuit Court of Appeals are reported in 101 F. (2d) 841.

## JURISDICTION

The judgment of the Circuit Court of Appeals (R. 235-236) was entered on February 28, 1939. The petition for a writ of certiorari was filed on March 22, 1939, and was granted on April 24, 1939.

The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10, paragraphs (e) and (f) of the National Labor Relations Act.

#### QUESTION PRESENTED

The Board found that respondent has dominated and interfered with the formation and administration of a labor organization of its employees and has contributed to it financial and other support and that respondent is dominating and interfering with the administration of the organization, all contrary to Section 8 (2) of the National Labor Relations Act. The question is whether the Board, in addition to ordering respondent to cease and desist from such acts, properly required respondent to withdraw all recognition from the organization as a representative of respondent's employees for purposes of collective bargaining, and completely to disestablish the organization as such a representative.

#### STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C. Supp. IV, Sec. 151 *et seq.*) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist

labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: \* \* \*

SEC. 10. (c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. \* \* \*

## STATEMENT

A charge (R. 1) having been filed with the Board by the Industrial Union of Marine & Shipbuilding Workers of America, a labor organization, the Board, by its Regional Director at Baltimore, Maryland, issued on June 18, 1937, a complaint and notice of hearing (R. 2-4) which were duly served upon respondent. In addition to jurisdictional allegations the complaint, so far as now material, alleged that respondent had dominated, supported, and interfered with the formation of the Employees' Representation Committee of the Newport News Shipbuilding & Dry Dock Company (hereinafter referred to as "the Plan"<sup>1</sup>), and that respondent thereby had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the Act (R. 2-4).<sup>2</sup>

Respondent, after an unsuccessful attempt to enjoin the agents of the Board from proceeding with the case (*Newport News Shipbuilding & Dry Dock Co. v. Schauffler*, 303 U. S. 54), appeared

<sup>1</sup> The term "revised Plan" will be used to refer to this organization as it existed after the amendments of May 1937 (see pp. 10, 24-25, *infra*).

<sup>2</sup> The complaint also alleged that respondent had discharged seven of its employees in violation of Section 8 (3) of the Act (R. 2-3). These allegations were dismissed by the Trial Examiner with respect to all but four of these employees (R. 186), and by the Board with respect to the remainder (R. 203).

specially and filed a motion to dismiss the complaint for lack of jurisdiction. It also filed an answer (R. 4-7), admitting in part the jurisdictional allegations of the complaint, and also admitting<sup>3</sup> that in 1927, in cooperation with its employees, "it aided in putting into force and effect at its shipyard a plan of employee representation" (R. 6), and that "it did lend its moral support and encouragement to the formation and continuation of said plan" (*id.*). It denied, however, that it had engaged in unfair labor practices within the meaning of the Act. Prior to the hearing the Employees' Representation Committee, one of the committees administering the revised Plan, obtained leave to intervene and filed an answer denying the allegations of the complaint (R. 7-10).

A hearing was held from August 30 to September 8, 1937, before a Trial Examiner designated by the Board (R. 10-146). Full opportunity to examine and cross-examine witnesses and to introduce evidence was afforded all the parties. On March 9, 1938, the Trial Examiner filed an intermediate report, finding that respondent had engaged in unfair labor practices within the meaning of Section 8 (1), (2), and (3)<sup>a</sup> of the Act, and recommending that respondent cease and desist from such practices and take certain affirmative action to remedy them, including the withdrawal of recognition from, and disestablishment of, the

<sup>a</sup> See footnote 2, page 4, *supra*.



Plan as a representative of respondent's employees (R. 177-186). Exceptions were filed by respondent (R. 187-191) and by the Committee, and on May 11, 1938, counsel for respondent, the Committee, and the Union participated in oral argument before the Board, respondent also filing a brief. On August 9, 1938, the Board issued its finding of fact, conclusions of law, and order (R. 192-203). The facts, as found by the Board, may be summarized as follows:

*Nature of Respondent's operations.*—Respondent, a Virginia corporation, owns and operates at Newport News, Virginia, one of the most important shipyards in the United States (R. 194, 195). Respondent there engages in the business of designing, constructing, overhauling, and repairing ships for the United States Navy and for foreign and domestic interests, and in building water turbines (R. 194). At the time of the hearing it employed about 5,500 persons (R. 195).

The enterprise is dependent to a very substantial extent upon interstate commerce for its materials and supplies. Between January 1936 and August 1937 respondent purchased outside the State of Virginia approximately 90 percent of the \$13,000,000 worth of materials used in its business. These out-of-state purchases included all of the steel and coal used, more than 82 percent of the

lumber, and 87 percent of the remaining materials (R. 194).

Although the greater part of respondent's production consists of ships built for the United States Navy, from June 1934 to the date of the hearing it had under construction three merchant vessels at contract prices aggregating \$1,020,000 (R. 195). A considerable portion of respondent's business also consists of repairing and overhauling vessels of both foreign and domestic registry. Between July 1935 and August 1937 respondent serviced 322 vessels at a billing price of over \$3,000,000 (R. 195). Included were 43 ships of foreign registry and 279 of American registry, all of the former and a substantial number of the latter being engaged in interstate or foreign commerce (R. 195).<sup>4</sup>

*The unfair labor practices.*—The Plan dates from the year 1927 when it was first put into effect by respondent in cooperation with its employees (R. 196). The purposes of the Plan were stated in its preamble (R. 196):

In order to give the employees of the Company a voice in regard to the conditions under which they labor, and to provide an orderly and expeditious procedure for the prevention and adjustment of any future

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<sup>4</sup>The petition for certiorari presents no question concerning the jurisdiction of the Board and no cross-petition has been filed.

differences, and to anticipate the problem of continuous employment, a method of representation of employees is to be established.

By this original Plan provision was made for the annual election by the employees of 21 white and 7 colored representatives, who were to be paid \$100 annually by respondent for serving in that capacity. Supervisory employees were ineligible to vote or serve as representatives. The Plan was administered by five <sup>s</sup> committees, each composed of five elected representatives and not more than five representatives selected by the management from among the employees. The Plan also provided for a Management's Representative, who was to "keep the Management in touch with the Representatives, and represent the Management in negotiations with the Representatives, their Officers and Committees." A provision for arbitration of differences became effective only upon the concurrence of respondent's president. Amendments of the Plan required a vote of either two-thirds of the full membership (including management representatives) of the Rules Committee or a majority of all the elected and management representatives at an annual conference. No provision was made for dues. (R. 196-197.)

The Plan was revised in 1929, 1931, 1934, 1936, and 1937. In substance, however, the 1931 revision

<sup>s</sup> The Board's decision erroneously states (R. 196) that there were four committees.

was maintained until 1937. Under it there were seven changes worthy of note. (1) One white and one colored employee representative was elected by the employees in each department and division, the management appointing an equal number of management representatives. (2) The annual remuneration paid elected employees was reduced to \$60. (3) The five governing joint committees were supplanted by a General Joint Committee composed of all elected and management representatives (a majority of each class constituting a quorum) and empowered to take final action upon all subjects referred to it by any elected or management representative or by the Management's Representative, subject to the approval of the president of respondent. (4) An Executive Committee was created, composed of five elected representatives and five management representatives. (5) Nominations and elections were to be arranged for by the Management's Representative,\* but "in so far as possible conducted by the employees themselves." (6) The provision for arbitration of grievances upon consent of the president of respondent was eliminated in favor of a provision that if the Executive Committee failed to settle the matter "the President of the Company shall be notified." (7) The former provision for amend-

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\* The Board's decision erroneously states (R. 197) that the nominations and elections were to be arranged for by the management's representatives.

ments was eliminated in favor of a provision that amendments could be made by a two-thirds vote of the entire General Joint Committee, "when approved by the President of the Company." (R. 197.)

The Board found that from the Plan's inception in 1927 until its final revision in 1937 respondent dominated, assisted, and interfered with its formation and administration (R. 197).

The 1937 revision occurred in May, shortly after this Court had sustained the constitutionality of the Act, but 22 months after the effective date of the Act. It originated in the General Joint Committee, one-half of the members of which were management representatives, and was referred for suggestions to the similarly constituted Executive Committee and to the elected representatives separately. The personnel manager and the general manager of respondent each took an active part in the revision of the Plan. On May 20, 1937, after the Management's Representative announced that the revision was acceptable to respondent, the revised Plan was adopted by the General Joint Committee (R. 197).

The Board found that since the procedure followed was that of amendment of the existing Plan—a procedure which required respondent's consent—the revision could not possibly have been free from domination and interference by respondent with the employees and their elected representatives (R. 198).



The Board also found that the provisions of the revised Plan made it still the creature of respondent. The revised Plan eliminated the compensation paid to elected representatives, and substituted for the General Joint Committee and the Executive Committee a single Employees' Representative Committee, composed of representatives elected by the employees. However, the revised Plan provided that the action of the Committee should be final and effective "upon agreement by the Company," and that any article could be amended by two-thirds of the entire membership of the Committee "unless disapproved by the Company within 15 days after their passage." The procedure for settling grievances concludes with the presentation of the grievance to respondent's personnel manager or general manager. As thus revised, the Plan was printed in book form at respondent's expense, and distributed by respondent's supervisors. Copies of the minutes of each meeting held by the Committee are duplicated at respondent's expense and on respondent's stationery, and distributed through respondent's yard mailing service, one copy being regularly sent to respondent's personnel manager. (R. 198-199.)

The Board found that respondent had dominated and interfered with the formation and administration of the Plan, and had contributed support to it (R. 199). The Board also found that

under the revised Plan respondent had power to stifle independent action of the Committee, and that the Committee is incapable of serving respondent's employees as their genuine representative for purposes of collective bargaining (R. 199).

Upon these findings, the Board concluded that respondent had engaged and was engaging in unfair labor practices within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the Act. It thereupon entered an order (R. 203) requiring respondent to cease and desist from such unfair labor practices, to withdraw all recognition from the Plan as a representative of its employees, completely to disestablish the Plan as such representative, and to post appropriate notices. The complaint was dismissed with respect to the alleged violations of Section 8 (3) of the Act (R. 203; see footnote 2, page 4, *supra*).

On August 18, 1938, respondent, pursuant to Section 10 (f) of the Act, filed with the court below its petition to review the foregoing order (R. 204-210). On August 29, 1938, the Board filed an answer and request for enforcement of its order (R. 211-215). On February 28, 1939, the court directed the enforcement of the order with the elimination therefrom of paragraph 2 (a), requiring withdrawal of recognition from and disestablishment of the Plan as a representative of the employees (R. 222-231). Judge Parker, dissenting in part, was of opinion that the order should have

been granted full enforcement (R. 231-234). On March 22, 1939, the Board filed a petition for a writ of certiorari, which was granted on April 24, 1939 (R. 239).

#### SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that there was "no reasonable ground" upon which the Board's order requiring respondent to withdraw recognition from and disestablish the Plan as a representative of its employees could be sustained.

2. In refusing to enforce and in setting aside paragraph 2 (a) of the Board's order.

#### SUMMARY OF ARGUMENT

##### I

The Board found that both before and after the 1937 amendments to the Plan, respondent dominated and interfered with the administration of that labor organization in violation of Section 8 (1) and (2) of the Act. Those findings are fully supported by the evidence.

##### II

The Board plainly had power to determine that continued recognition of the Plan would interfere with the employees' rights to freedom in self-organization and to decide that withdrawal of such recognition by respondent would effectuate the policies of the Act. *National Labor Relations Board*

v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261; *National Labor Relations Board v. Pacific Greyhound Lines, Inc.*, 303 U. S. 272; *National Labor Relations Board v. Fansteel Metallurgical Corp.*, 306 U. S. 240. The conclusion of the Board in this regard finds full support in the evidence and should have been accepted by the Court below. Both the formal provisions of the Plan and the fact that it cannot possibly be considered to have been freely selected by the employees as their collective bargaining representative require that conditions permitting a free choice be established.

### III

A. The factors relied upon by the Court below do not show that the Board's determination concerning the necessity of respondent withdrawing recognition from the Plan was unreasonable. The elimination of certain provisions, which permitted ready domination by respondent, cannot dissipate the effects of respondent's long continued participation and support. *National Labor Relations Board v. Fansteel Metallurgical Corp.*, 306 U. S. 240; *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197; *National Labor Relations Board v. Pacific Greyhound Lines, Inc.*, 303 U. S. 272. Similarly, petitioner's assertions that, by a referendum and by their participation in the elections held by the Plan, the employees have indicated a free desire for its continuance, are plainly

insufficient to establish that fact. The Board could not assume that respondent's interference with freedom of choice has been unsuccessful and that the choice asserted to have been made by the employees is a free one. Particularly is this so while recognition of the Plan continues to give it a dominant position in the plant. *Texas & New Orleans R. Co. v. Brotherhood of Railway Clerks*, 281 U. S. 548; *Virginian Ry. Co. v. System Federation No. 40*, 300 U. S. 515. Nor do certain aspects of the Plan's operation relied upon by the court demonstrate that it is a genuine representative of the employees.

B. Apart from their insufficiency to show an abuse of the Board's discretion, the assertions of counsel that the Plan had been amended in certain respects after argument of the cause, and evidence not made the subject of particular findings by the Board, were improperly considered by the court below. If the alleged modifications of the Plan were deemed material, an application to adduce evidence concerning them should have been made under Section 10 (e) of the Act, the Board should have been afforded an opportunity to oppose, and, were the application granted, the Board should have been the one to make findings upon the evidence adduced. In any event, evidence of events occurring subsequent to the Board's order is not normally material to the validity of the order. *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261; *Consolidated*



*Edison Co. v. National Labor Relations Board*, 305 U. S. 197; *National Labor Relations Board v. Carlisle Lumber Co.*, 99 F. (2d) 533 (C. C. A. 9th), certiorari denied, 306 U. S. 646.

Nor was the result of the referendum and the extent of the employees' participation in the Plan's elections properly before the court. This data, asserted in a letter to the Board after the hearing, was properly excluded by the Board since it was not offered in conformity with the Board's Rules and Regulations. If such exclusion were improper, respondent's remedy was under Section 10 (e) of the Act. *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197. The court ignored the requirements of the statute in treating counsel's mere assertions as to events occurring subsequent to the hearing before the Board as uncontroverted facts of record.

Nor was the court at liberty to assume the fact-finding function of the Board in referring to and relying upon bits of evidence not made the subject of particular findings by the Board. Had findings upon these matters been essential to the decision, which they were not, the case should have been remanded to the Board, as the trier of the facts, to supply the findings and appropriate inferences therefrom.

#### ARGUMENT

The court below has directed enforcement of those portions of the Board's order requiring respondent to cease and desist from dominating, in-

terfering with, and contributing support to the Plan, or to any other labor organization of its employees, and from interfering with, restraining, or coercing its employees in any of the rights guaranteed by Section 7 of the Act (R. 426). The majority of the court, however, refused to direct enforcement of paragraph 2 (a) of the Board's order, which, as affirmative action which the Board found would effectuate the policies of the Act, requires respondent to (R. 203):

Withdraw all recognition from Employees Representative Committee of the Newport News Shipbuilding and Dry Dock Company, also known as Representation of Employees, as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and completely disestablish Employees Representative Committee of the Newport News Shipbuilding and Dry Dock Company, also known as Representation of Employees, as such representatives;

The petition for certiorari presents only a single issue—whether this paragraph of the order should have been granted enforcement.

We believe that the Board's order was entitled to full enforcement, and that the decree of the court below modifying the order by striking out paragraph 2 (a) should be reversed. We shall show, first, that the Board was admittedly correct

in concluding that respondent had violated Section 8 (1) and (2) of the Act. Second, we shall show that on the record made before the Board it was fully warranted in concluding that paragraph 2 (a) of the order would effectuate the policies of the Act. Finally, we shall discuss the court's reliance upon certain factors which, it concluded, showed that paragraph 2 (a) is without reasonable basis.

# I

## RESPONDENT HAS ADMITTEDLY ENGAGED IN UNFAIR LABOR PRACTICES WITHIN THE MEANING OF SECTION 8 (1) AND (2) OF THE ACT

Respondent has filed no cross-petition from the decree of the court below enforcing those portions of the Board's order other than paragraph 2 (a). Nor has respondent attempted in its brief in opposition to the Board's petition for certiorari to support the decision of the court below with respect to paragraph 2 (a) on the ground that there has been no violation of the statute, and that, therefore, the whole order should have been denied enforcement. Respondent had plainly engaged in numerous and continuing violations of Section 8 (1) and (2) of the Act.

The Board's findings in this respect have already been summarized in the Statement, *supra*, pp. 7-12, and the evidence in detail will be set out in Point II, *infra*, pp. 21-30, in the discussion of the propriety of paragraph 2 (a). Here it will be sufficient

to point out that before the revision of 1937—*i. e.*, from July 5, 1935, the effective date of the Act, to June 30, 1937, the effective date of the 1937 revision of the Plan, respondent paid the so-called “employee” representatives, elected by the employees, for their service in that capacity (R. 153); respondent had an equal voice on all committees (R. 155); respondent had a complete nullifying power over the procedure for settlement of grievances (R. 156-157); and respondent had a complete and effective veto of all amendments to the Plan by its equal voice in the committee which could amend only by a two-thirds vote (R. 157).<sup>7</sup> See pp. 21-24, *infra*. After the 1937 amendments, which inevitably, because of respondent’s participation in and veto power under the amendment procedure, were themselves not the product of free and untrammelled action by the employees, respondent’s control persisted by its veto power over both the action taken by the Employees’ Representative Committee (R. 151) and over all amendments (R. 152-153). Financial and other support was continued (R. 42, 77, 89-90, 103-104, 44-46, 107). See pp. 24-30, *infra*. Plainly, the Board had no alternative but to find that respondent had violated and was violating Section 8 (1) and (2) of the Act.

<sup>7</sup> Respondent’s suggestion (Br. in Opp., p. 15) that the Act was not held constitutional by this Court until April 1937 is, of course, completely irrelevant.

ON THE RECORD MADE BEFORE THE BOARD PARAGRAPH 2 (a) OF THE ORDER IS VALID AND PROPER.

The Board, having properly found that respondent had violated Section 8 (1) and (2) of the Act, was authorized by Section 10 (c) of the Act to require, in addition to the cessation of such practices, such affirmative action as would effectuate the policies of the Act. In the exercise of its duty in this respect the Board concluded that respondent should withdraw recognition from and disestablish the Employees Representative Committee as the representative of its employees for collective bargaining. No question exists as to the power of the Board to make such an order. *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 268. And no question exists as to the scope of review: the Board was authorized to draw the inference of fact whether the Plan would be a continuing obstacle to the full and free exercise of the employees' rights of self-organization and collective bargaining, and to decide what affirmative action would effectuate the policies of the Act. Its determination is conclusive unless unreasonable because it lacks support in the evidence. *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, *supra*, pp. 268, 270-271; *National Labor Relations Board v. Pacific Greyhound Lines, Inc.*, 303 U. S. 272, 275; *National Labor Relations Board v. Fansteel Metal-*



*lurgical Corp.*, 306 U. S. 240, 262. We believe that a brief review of the facts contained in the record dealing with the history of the Plan prior to its amendment in 1937, the procedure by which the 1937 amendments were adopted, and the provisions of the Plan after those amendments will show that the conclusion of the Board was amply supported. We shall deal in Point III, *infra*, with the assertions that the Plan was again changed after the Board's order had been promulgated.

#### A. THE HISTORY OF THE PLAN PRIOR TO THE 1937 AMENDMENTS

The Plan, as initiated by respondent and its employees in 1927 (R. 75), consisted of a labor organization which was completely respondent's creature. Representatives elected by the employees, who were ostensibly, as "Employees' Representatives", to represent the employees' interests, as opposed to the "Company's representatives" selected by respondent, were paid \$100 a year by the respondent for serving (R. 160). Further control by respondent was secured through the provision for equal representation by the Company's representatives and the elected representatives on the five committees which administered the Plan (R. 163). Grievance procedure was carefully scheduled and ended in a blank wall; grievances could be presented to the appropriate foreman, the Management's Representative, and to either a superior officer of petitioner or the General Committee, in that order (R. 165). If no adjustment were reached,

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the matter could be referred to the Appeals Committee, and if that Committee in turn failed to reach a settlement, the grievance might be referred to arbitration, if respondent's president agreed (R. 165). If he did not agree, the matter was at an end. Finally, complete control over the form of the labor organization was secured to respondent by the requirement that the Plan could not be amended except (1) by a two-thirds vote of the Rules Committee (one-half of the membership of which were respondent's representatives) or (2) by a "concurrent majority vote of the Employees' Representatives and of the representatives of the Management at an Annual Conference" (R. 166). Collective bargaining free from employer domination and interference was plainly impossible.

Respondent insists that in 1927, when the Plan was adopted, nothing contained in it was illegal or immoral. Its legality may be admitted; however, without in any way affecting the undeniable fact that in its origin and early workings the Plan was simply a creature shackled to respondent both by its form and by its necessary methods of operation. The decisions leave no doubt that the Board, in drawing its conclusions, need not close its eyes to everything which occurred before the passage of the Act. Cf. *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 268; *Jeffery-De Witt Insulator Co. v. National Labor Relations Board*, 91 F. (2d) 134 (C. C. A.

4th), certiorari denied, 302 U. S. 731; *National Labor Relations Board v. Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th), certiorari denied, 304 U. S. 575; 99 F. (2d) 533 (C. C. A. 9th), certiorari denied, 306 U. S. 646; *Titan Metal Mfg. Co. v. National Labor Relations Board*, decided July 20, 1939 (C. C. A. 3d).

The Plan became plainly illegal on July 5, 1935, when the National Labor Relations Act became law. Some changes had occurred since 1927, but the Plan remained much as it had been, respondent's domination, interference, and support continuing in open defiance of the Act. The annual remuneration of employee representatives had been reduced, in 1931, from \$100 to \$60 (R. 153), but had been restored to \$100 in 1936 (R. 35). The five joint committees had been replaced by a General Joint Committee composed of all the elected representatives and an equal number of respondent's representatives, and an Executive Committee, composed of five elected and five of respondent's representatives (R. 155-156). The abortive procedure for arbitration of grievances had been eliminated in favor of the even less effectual provision that if the Executive Committee failed to settle the matter, "the President of the Company shall be notified" (R. 156-157). Respondent's control over the Plan had become absolute by allowing amendments only upon "two-thirds' vote of the entire membership of the General Joint Committee, when approved by the President of the Company" (R. 156). No dis-

cussion is necessary to establish that the Plan was so devised that in all important respects respondent could prevent any expression of the will of the employees free of the management's influence.

#### B. THE REVISION OF MAY 1937

The characteristics of the Plan underwent some change in form, but very little in substance, in 1937. Indeed, both respondent's interference in the revision of the Plan, and the results which were achieved by that revision, demonstrate the Board's conclusion that the Plan "is incapable of serving the respondent's employees as their genuine representative for purposes of collective bargaining" (R. 199).

#### 1. RESPONDENT'S INTERFERENCE WITH THE REVISION OF THE PLAN

The revision was effected by amending the existing Plan.<sup>6</sup> Inevitably, therefore, respondent exercised a dominant voice. As stated above, the amendment procedure then in force (R. 156, 157) required not only a two-thirds vote of the General Joint Committee, half of the members of which were respondent's appointees, but also the approval

<sup>6</sup> The booklet in evidence (Bd. Exh. 1 K) bears the legend "REPRESENTATION OF EMPLOYEES In The Plant of the Newport News Shipbuilding and Dry Dock Company, Newport News, Virginia," with the notation that the bylaws of the Plan therein provided had been revised 7/1/29, 10/5/31, 2/5/34, 12/8/36, and 6/30/37 (R. 146). The booklets were printed by respondent (R. 77).



of respondent's president. This procedure was followed (R. 90-91, 50-53, 171). And, of course, while this revision was being made the elected representatives of the General Joint Committee, who were the employees' only representatives, were being paid by respondent for their services in that capacity (R. 35).

Respondent's interference, however, was not confined to the inevitable effect of its dominant position in the amending machinery; its officers took an active part in the drafting of the changes. The question of revision arose at a meeting of the General Joint Committee (R. 91). Blanton, the chairman of that Committee, then presented an original draft of the revision to two of respondent's officials—the general manager and the personnel manager (R. 51-52). These officials made numerous changes in the draft, and it was then referred to the Executive Committee, in accordance with prior practice (R. 51-52, 91). The draft then passed successively through the Executive Committee, the General Joint Committee, and a meeting of the elected representatives (R. 91, 52-53). On May 20, 1937, it was finally adopted by the General Joint Committee after the Management's Representative announced at the meeting that the revision “had been discussed with and was acceptable to the Management” (R. 171, 91). At best, the revised Plan was the joint product of respondent and its employees.

## 2. RESPONDENT'S CONTINUED DOMINATION AND SUPPORT OF THE REVISED PLAN

The practice under the revised Plan, no less than the express provisions retaining a large degree of control in respondent, illustrates its basic principle: that respondent is concerned with, and has at least an equal responsibility in, the activities of its employees toward self-organization and collective bargaining. For example, under the revised Plan respondent's personnel manager regularly receives a copy of the minutes of each meeting (R. 73). That there is no express provision to that effect makes the practice even more, rather than less, significant. Again, respondent's financial and other support of the Plan has been continued. Respondent paid for printing the revised Plan booklets (R. 77, 42) and distributed the copies through its supervisors (R. 42). Respondent regularly makes duplicate copies of the minutes of the meetings of the Employees' Representative Committee at its own expense and on its own stationery, and distributes them through its yard mailing service (R. 103-104, 89-90). Respondent pays the clerks and judges who conduct elections of representatives on its property for the time spent in such activity (R. 44-46, 107).

Aside from these evidences of the supervision and support accorded to the revised Plan by respondent are the express provisions by which respondent definitely retains the power to prevent committee action not agreeable to respondent.

While the revision did eliminate from the committees all representatives appointed by respondent and also eliminated the pay to elected representatives (R. 148, 150-151), it did not eliminate respondent's control.

Two provisions are particularly significant. Section 1 of Article VI (R. 151) provides that:

The action of this Committee [the Employees' Representative Committee] shall be final, and becomes effective upon agreement by the company.

And Section 1 of Article IX (R. 152-153) provides that any article may be amended by a two-thirds vote of the entire membership of the Employees' Representative Committee, but with the important qualification that:

Such amendments shall be in effect at the time specified by the \* \* \* Committee, unless disapproved by the Company within 15 days after their passage.

Obviously, by either of these provisions, respondent retains influence and control over action by its employees, in matters of self-organization, which might be adverse to its own desires. The first provision gives respondent a complete and absolute veto over the action of the Employees' Representative Committee, which in turn has complete control over the action of all other committees (Art. VI, Secs. 2, 3; R. 151). The second provision insures the continuation of that control by a complete and absolute check on amendments. Both are plainly

the "domination" and "interference" condemned by Section 8 (2) of the Act.\*

Respondent, before the Board and in the court below, attempted to avoid the effect of these two provisions by resort to an unrealistic interpretation of the Plan. From the untenable premise that the printed booklet is a contract binding on respondent the conclusion is drawn that only those actions by the Committee and those amendments which affect respondent's "rights" under the "contract" are subject to respondent's approval. Such an interpretation simply cannot be supported.

In the first place, obviously, the Plan is not a contract. No one is bound to do anything. There is no provision for signatures and there are none in fact.<sup>10</sup> But even if the revised Plan were a contract, there is nothing in the Plan which would warrant the limitation which respondent suggests as to the scope of these two provisions. The provision requiring respondent's approval of Committee action, *supra*, p. 27, is a part of Article VI, dealing with the functions of the Committee, and immediately follows a sentence vesting in the Committee power to take action on matters presented to it (R. 151). The approval provision refers to "the action of this Committee" and plainly embraces every type of action which the Committee might take. There is no suggestion of anything

\* See Senate Report No. 573, 74th Cong., 1st Sess., p. 10.

<sup>10</sup> Indeed, an effort to have the word "agreed" inserted in the preamble of the 1937 revision was unsuccessful (R. 50).

other than a carefully devised mechanism to give respondent a final veto over all action of the Plan's governing body. Similarly, Article IX, *supra*, p. 27, state that "any article in this book" may be amended in the manner specified, and provides that "such amendments" shall become effective unless disapproved by respondent (R. 152-153).

Finally, if respondent has any "rights" at all under the Plan, they are necessarily "rights" in a field in which the Act forbids them to exist. The matter and the manner of the representation of respondent's employees for purposes of collective bargaining are the exclusive concern of the employees. Respondent completely obliterates the distinction between action *within* a union, as to which respondent can have no rightful voice, and action *by* a union in attempting to obtain its demands by agreement with an employer, as to which respondent has, of course, full freedom of action to accept or reject. The "rights" which respondent here asserts are "rights" to interfere in the former type of action. The assumption which necessarily underlies respondent's argument is that representation for purposes of collective bargaining is a privilege conferred upon the employees by the employer, and is to be exercised under the employer's continuous supervision and control. That is in the teeth of the Act.

Respondent also suggests that the veto powers are of no importance because they have never been



exercised. The circumstance is of no significance. The powers exist and may be exercised. Moreover, a limitation upon employees' freedom of action can be imposed by the existence of a veto power as fully as by its exercise. The record in this case furnishes an apt illustration. When the 1937 amendments were being drawn up, Chairman Blanton submitted his proposed revision to the high management officials of respondent before the Committee had acted on them (R. 51-52) because, knowing that respondent would block any changes undesirable to it, he thought it well to "be advised" in advance of respondent's wishes (R. 73).

The inadequacy of the revised Plan as an effective bargaining agency is further demonstrated by certain significant omissions. There is no provision for payment of dues and the Plan, because of its lack of financial resources, continues to be economically dependent upon respondent for the favors heretofore accorded to it. Moreover, the Plan has the same defect which the Court pointed out in the *Pennsylvania Greyhound* case—there is "no procedure for meetings of members or for instructing employee representatives" (303 U. S. at 270).<sup>11</sup>

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<sup>11</sup> The effect of this omission on the efficacy of the Plan as a bargaining agency is aptly demonstrated by the testimony of I. C. Wilkins, Secretary of the old and the revised Plan, that some time in 1937 the governing committee voted in favor of respondent's proposal for an increase in hours of work from 36 to 40 a week, without polling the employees

C. THE BOARD PROPERLY REQUIRED WITHDRAWAL OF  
RECOGNITION FROM AND DISESTABLISHMENT OF THE  
REVISED PLAN

On these facts, we submit, the Board was fully warranted in concluding that the Committee was "incapable of serving the respondent's employees as their genuine representative for purposes of collective bargaining" (R. 199), and properly ordered respondent to withdraw recognition from and disestablish the revised Plan as a representative. Indeed, it is difficult to see how any other conclusion would have been possible.

As we have shown above, even after the 1937 revision the Plan was indistinguishable, except in minor matters of detail, from the organization which was ordered to be disestablished in *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 270. Here, as in the *Pennsylvania Greyhound* case, the Employees' Representative Committee was a "company union so organized that it is incapable of functioning as a bargaining representative of employees." The employees could not, without further amendment of the Plan, take effective action free from respondent's domination, and amendment was sub-

on their views, and that he voted in favor of the proposal without consulting the employees in his department except that in a poll taken by him a year earlier he found the sentiment of the employees on the proposal to be evenly divided (R. 102-103, 100).

ject to respondent's veto. Free and unhampered enjoyment of the rights guaranteed to the employees by Section 7 of the Act was plainly impossible.

But the Board's conclusion that the Plan should be disestablished need not, and does not, rest solely upon the formal provisions of the Plan. Orders of the Board requiring disestablishment of company-dominated labor organizations have been upheld even though the organizations were structurally capable of functioning as truly independent representatives of the employees: *National Labor Relations Board v. Pacific Greyhound Lines, Inc.*, 303 U. S. 272; *National Labor Relations Board v. Fansteel Metallurgical Corp.*, 306 U. S. 240.<sup>12</sup> Those

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<sup>12</sup> See also *National Labor Relations Board v. Ronni Parfum, Inc.*, 104 F. (2d) 1017 (C. C. A. 2d); *National Labor Relations Board v. American Mfg. Co.*, decided July 26, 1939 (C. C. A. 2d); *National Labor Relations Board v. National Licorice Co.*, 104 F. (2d) 655 (C. C. A. 2d), petition for certiorari granted October 9, 1939, No. 272, this Term, 1939; *National Labor Relations Board v. Stackpole Carbon Co.*, 105 F. (2d) 167 (C. C. A. 3d); *Titan Metal Mfg. Co. v. National Labor Relations Board*, decided July 20, 1939 (C. C. A. 3d); *National Labor Relations Board v. Griswold Mfg. Co.*, decided Sept. 21, 1939 (C. C. A. 3d); *National Labor Relations Board v. J. Freezer & Son, Inc.*, 95 F. (2d) 840 (C. C. A. 4th); *National Labor Relations Board v. Wallace Mfg. Co., Inc.*, 95 F. (2d) 818 (C. C. A. 4th); *National Labor Relations Board v. Eagle Mfg. Co.*, 99 F. (2d) 930 (C. C. A. 4th); *Virginia Ferry Corp. v. National Labor Relations Board*, 101 F. (2d) 103 (C. C. A. 4th); *National Labor Relations Board v. Kiddie Kover Mfg. Co.*, 105 F. (2d) 197 (C. C. A. 6th); *Cudahy Packing Co. v. National Labor Relations Board*, 102 F.

decisions recognize that domination by the employer, and hence a continuing interference with the employees' freedom of self-organization, may exist even though it is not made inevitable by the form of the labor organization itself.

The decisions have full application here. Irrespective of its specific provisions, the revised Plan cannot possibly be considered the result of a free and untrammelled selection by the employees of their collective bargaining representative. The revised Plan might well have been substantially different if respondent had not had, and had not exercised, its power over the amendment procedure (see pp. 24-25, *supra*). It is impossible to say exactly to what extent respondent dictated features of the revision which it deemed in its own interest. It is possible, however, to say categorically that respondent's control over and active participation in the revision procedure completely bars respondent from any assertion that the Plan was exactly as the employees would have made it had they

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(2d). 745 (C. C. A. 8th), certiorari denied, October 9, 1939, No. 81 this Term; *Hamilton-Brown Shoe Co. v. National Labor Relations Board*, 104 F. (2d) 49 (C. C. A. 8th); *National Labor Relations Board v. Lund*, 103 F. (2d) 815 (C. C. A. 8th); *Wilson & Co., Inc. v. National Labor Relations Board*, 103 F. (2d) 243 (C. C. A. 8th); *National Labor Relations Board v. American Potash & Chemical Corp.*, 98 F. (2d) 488 (C. C. A. 9th), certiorari denied, 306 U. S. 643; *National Labor Relations Board v. Carlisle Lumber Co.*, 94 F. (2d) 138 (C. C. A. 9th), certiorari denied, 304 U. S. 575; 99 F. (2d) 533 (C. C. A. 9th), certiorari denied, 306 U. S. 646; *Swift & Co. v. National Labor Relations Board*, decided June 7, 1939 (C. C. A. 10th).

acted alone and free from respondent's interference.

Moreover, the Plan's history of management initiation, participation, and support has inevitably shaped the attitude of the employees toward it as a plan tied up inextricably with respondent's interests.<sup>13</sup> Certainly, too, the continued support, interference, and domination which respondent has accorded the Plan since 1937 (see pp. 26-27, *supra*) has not weakened that attitude. Irrespective of the obnoxious provisions in the Plan itself, the effect of the paternalism which has characterized its administration throughout can be eliminated only by the elimination of the Plan. The language of this Court in *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, is apposite (p. 236):

The continued existence of a company union established by unfair labor practices or of a union dominated by the employer is a consequence of violation of the Act whose continuance thwarts the purposes of the Act and renders ineffective any order restraining the unfair labor practices.

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<sup>13</sup> The Senate Committee on Education and Labor, discussing Section 8 (2), stated (Sen. Comm. Print Comparison of S. 2961, 73d Cong., and S. 1958, 74th Cong., p. 27):

"As the testimony before the Committee last year and this year amply demonstrates, it is at the stage of 'formation' that employer activity is most effective and harmful."



## III

THE ASSERTIONS AND EVIDENCE RELIED UPON BY THE COURT DO NOT ESTABLISH THAT PARAGRAPH 2 (a) OF THE BOARD'S ORDER WAS UNREASONABLE AND, IN ANY EVENT, WERE IMPROPERLY CONSIDERED BY THE COURT

The court below, in rejecting as unreasonable the Board's determination that disestablishment of the Plan was necessary for creation of the employees' freedom of choice, bottomed its conclusion largely upon certain assertions by counsel as to facts not of record before the Board and upon certain evidence upon which the Board did not make separate findings of fact. The assertions and the evidence referred to were, in brief, as follows: (a) After argument of the cause in the court below, the Committee, subject to respondent's agreement, is alleged to have amended the Plan by eliminating the provision requiring respondent's agreement before action by the Committee became effective and by eliminating respondent's veto over amendments proposed by the Committee. Respondent agreed to these changes. (b) It is said that, in a referendum held on June 7, 1938, subsequent to the filing of the Intermediate Report and to the oral argument before the Board, a large majority of the employees voted to continue the Plan, and that a week later all but 656 of the men participated in the annual election held under the Plan. Counsel

for the Plan asserted these facts by letter to the Board and requested that they be made part of the record. The Board denied this request both on the ground it was not properly made under the Board's Rules and Regulations and because the Board thought the data immaterial (R. 193-194). The court, while not holding that the Board erred in thus excluding the proffered evidence, nevertheless relied heavily upon it, as if it were part of the record before the Board (R. 229, 230). (c) The court found directly from the evidence that respondent had not interfered with freedom of choice or discouraged union activity; that it has assumed none of the expenses of Plan elections since 1935; that there had been no labor disputes in respondent's yard for 43 years prior to the Board's hearing; and that the Committee has enjoyed a measure of success in negotiations with respondent (R. 228-229). The Board did not make separate findings concerning these matters.

We submit, first, that, assuming these assertions and the evidence relied upon by the court to be true, they do not establish that the Board's determination concerning the necessity of paragraph 2 (a) of the order is not supported by substantial evidence. Second, we believe that the court improperly considered the assertions of counsel and the evidence referred to. We shall consider these contentions in turn.

A. THE ASSERTIONS AND EVIDENCE DID NOT SHOW  
PARAGRAPH 2 (A) TO BE UNREASONABLE

The Board's determination that continued recognition of the revised Plan by respondent would impair the employees' freedom to select their own bargaining representatives, is entitled to finality if supported by substantial evidence. *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265; *National Labor Relations Board v. Pacific Greyhound Lines, Inc.*, 303 U. S. 272, 275. We have discussed, *supra*, pp. 21-30, the overwhelming proof which supports the reasonableness of the Board's finding in this regard. The court below plainly erred, we think, in concluding that the assertions and the evidence here under discussion overcame the evidence supporting the Board's finding and made that finding unreasonable.

1. After oral argument of the case, the court was advised by counsel for the Committee that respondent and the Committee had amended the Plan by eliminating certain provisions which, the Board found, permitted ready domination of the Plan by respondent.<sup>14</sup> Even were we to assume that the

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<sup>14</sup> The reply brief submitted on behalf of the Committee, intervenor, contained (p. 3) the following assertion, which the court accepted as true:

"With reference to the language in Section I of Article VI and in Section I of Article IX, Counsel for the intervenor, petitioner wishes to advise the Court that on November 22, 1938, the Employees' Representative Committee unanimously

presence of these provisions in the Plan's organic law constituted the whole, or even the essence, of respondent's illegal relations with the Plan, a cessation of such relations would not deprive the Board of power to issue an order reasonably designed to remove their effects upon the employees. *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 271; *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 230. But we need hardly re-summarize the Plan's long history of domination and support, its amendment in 1937 under the supervision of respondent, and respondent's continued domination and support after the amendments, in order to demonstrate that the excised provisions were not the sole, or even the most important, means by which the Plan's subservience to respondent was assured.

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amended Section I of Article VI by striking out the last sentence in Section I of Article VI and thus deleting from the written plan the following language: 'The action of this Committee shall be final, and become effective upon agreement by the Company.'

"And in striking from Section I of Article IX the last eleven (11) words, namely, 'unless disapproved by the Committee within fifteen days after their passage.'

"Since the language in question applied only to contractual matters effecting (sic) the employer and employees and not to the internal affairs of the Employees' Representative Committee, and was so understood by both parties, notice of this action by the Committee has been served on the Ship Yard and agreed to by them."

The record establishes beyond dispute that the Plan was and is a relic of days when company-dominated labor organizations served as an outstanding means of denying to employees freedom to choose their own bargaining representatives. The structure of such an organization is not conclusive in determining whether it has been foisted upon the employees and whether they are, in truth, free to choose a representative. It is, in short, contrary to reason to urge that the effects of respondent's sponsorship of and long-continued participation in the Plan can be dissipated simply by changing the Plan's structure, and that thereupon the revised Plan would cease to enjoy the influence that respondent has conferred upon it by illegal means. So long as the revised Plan remains, respondent's employees cannot make an independent and uninhibited selection of a collective bargaining representative. Their attitude toward the revised Plan is shaped, and must continue to be shaped, by the known attitude of respondent.

Respondent's contention does not differ in substance from that urged in *National Labor Relations Board v. Fansteel Metallurgical Corp.*, 306 U. S. 240. There the employer contended that a disestablishment order should be refused enforcement because the company-dominated union was not *structurally* incapable of serving as a true col-



lective bargaining representative, and, once the cease and desist portions of the Board's order were granted enforcement, the acts of domination and interference would cease (Brief, pp. 71-72). This Court, as it has stated before in *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 236, and held in *National Labor Relations Board v. Pacific Greyhound Lines, Inc.*, 303 U. S. 272, 275, refused to accept the view that the mere cessation of unfair labor practices can transform a labor organization which has been dominated, supported, and interfered with into a free and independent choice of the employees as their collective bargaining representative. The Court enforced the order requiring withdrawal of recognition from and disestablishment of the company-sponsored union (306 U. S., at 262).

2. The claim that the employees, by their participation in the elections and by their vote in the referendum, have evidenced their free acceptance of the Plan, is entirely lacking in substance. It casually assumes that respondent's efforts to suppress all freedom of choice have been unavailing. In view of respondent's thorough domination, support, and interference with the Plan, the attitude of the employees toward it was and is necessarily shaped thereby. By the same token, the existence, membership, and functioning of the Plan must be ascribed, in large measure, to that influence. Indeed, to contend otherwise is to deny the basic

Congressional findings declared in Section 1 of the Act—that such employer conduct precludes freedom of choice.

Chief among the harmful results of respondent's unlawful conduct is its recognition of the Plan, for recognition is a "pivotal factor" in the selection of a bargaining agent as well as in its functioning. *Texas & New Orleans R. Co. v. Brotherhood of Railway Clerks*, 281 U. S. 548; *Virginian Ry. Co. v. System Federation No. 40*, 300 U. S. 515. While such recognition continues, the employees cannot be free to make an independent decision concerning the Plan. No other labor organization could successfully present its merits as compared to those of the Plan for free judgment by the employees so long as the Plan continues in its dominant position as recognized bargaining agent. In the absence of any practicable alternative save total absence of representation, the employees may prefer to retain the Plan. Whether this or tacit acquiescence in a course of illegal conduct which has gone on for so long as to seem inevitable is the reason for the employees' choice, the support for the revised Plan shown in the referendum can only be termed a reflection of the extent to which respondent's unfair labor practices have canalized the desires of the men.

Thus, in relying upon the referendum and election as reflecting a free choice by the employees, the court below ignored the compulsions engen-

- o dered by the Plan's recognition and by the support and favor for it which respondent never sought to conceal. The statement of this Court in *National Labor Relations Board v. Pacific Greyhound Lines, Inc.*, 303 U. S. 222, 274-275, is particularly pertinent:

In ordering withdrawal of recognition of the Drivers' Association by respondent, the Board pointed out that a mere order to cease the unfair labor practices "would not set free the employee's impulse to seek the organization which would most effectively represent him"; that continued recognition of the Drivers' Association would provide respondent "with a device by which its power may now be made effective unobtrusively, almost without further action on its part. Even though he would not have freely chosen" the Association "as an initial proposition, the employee, once having chosen, may by force of a timorous habit, be held firmly to his choice. The employee must be released from these compulsions."

3. The evidence in the record concerning which the Board did not make particular findings of fact (*supra*, p. 36) had, of course, been considered by the Board in making the findings it did. Consequently, the court could properly have considered it along with all of the other evidence in the record in determining whether the Board's findings were adequately supported. When thus properly considered, however, we believe that this

evidence plainly did not warrant a conclusion that the Board's findings lacked substantial support, or that paragraph 2 (a) of the order was not a proper exercise of the Board's discretion.

First, despite the court's statement to the contrary, this evidence was in many respects not "uncontradicted." The court was in error, for example, in stating (R. 228) that respondent, during the life of the Plan had not in any way interfered with the selection by the employees of representatives of their own choosing. That was precisely the basic question at issue, and the court's statement is contrary to the conclusion of the Board and all the evidence upon which it was based (pp. 21-30, *supra*). Again, the statement by the court (R. 228) that all expenses of the elections under the Plan since 1937 have been borne by the employees is directly contrary to the undisputed evidence that respondent not only allows the elections to be held on its property, but also pays the clerks and judges of the elections for the time spent in such activity (R. 44-46, 107). Finally, the statement of the court (R. 229) that respondent has not discouraged membership in any union is contradicted by all the evidence of support accorded to the Plan, with the consequent discouragement of other union activity (pp. 21-30, *supra*).

Second, the other facts which the court found were not of significant weight in the circumstances

of this case and were plainly insufficient to establish that the Board's findings lack substantial support in the evidence. Thus an absence of labor disputes (R. 228) does not indicate either that respondent's employees have had full freedom to choose their collective bargaining representatives or that the policies of the Act have been effectuated for years past in respondent's yard. The peace obtaining during the truce resulting from employer domination of the employees' representatives cannot be ~~submitted~~ by respondent for the stable peace contemplated by the Act, based upon the adjustment of differences through negotiations between the employer and the freely designated representatives of his employees. The Act proceeds upon the premise that repression, whether or not it extracts present acquiescence from employees denied the right to organize freely, may finally lead to explosion.

Similarly, we think the court ignored the realities in characterizing the Plan as a successful representative of the men because it may have secured them certain benefits through negotiations with respondent (R. 229). Although the labor contract is the "manifest objective" of true collective bargaining (*Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 236), the Plan has not resulted in a single collective agreement covering wages, hours, or working conditions during the 9 years the Plan had been in effect up to the time of the hearing (R. 100).



Moreover, that some improvements may have followed the "bargaining" does not establish that the negotiations were between free agents. Upon the court's reasoning, gratuitous concession by an employer occupying both sides of the "bargaining" table justifies his continued denial of an opportunity to achieve the genuine negotiation intended by Congress.

We submit, therefore, that neither separately nor taken together do the assertions by counsel and the foregoing evidence relied upon by the court justify its conclusion that paragraph 2 (a) of the Board's order did not have substantial support. On the contrary, we believe that, on the record before it, the Board did not abuse its "judgment and discretion in determining \* \* \* whether the case is one requiring an affirmative order, and in choosing the particular affirmative relief to be ordered." *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265. Paragraph 2 (a) of the order, which represented an exercise of that discretion, was entirely reasonable and entitled to enforcement.

B. THE COURT BELOW IMPROPERLY CONSIDERED THE ASSERTIONS OF COUNSEL AND THE EVIDENCE NOT MADE THE SUBJECT OF PARTICULAR FINDINGS BY THE BOARD

Entirely apart from their lack of significance in determining whether or not the Board could reasonably have found disestablishment of the Plan to be required (*supra*, pp. 37-45), the as-

assertions of counsel upon which the court depended were, moreover, not entitled to be considered at all. The court, in determining the validity of the Board's order; could not properly rely upon matters not shown in the record. Similarly, the evidence not made the subject of separate findings by the Board was improperly considered by the court below.

1. THE ASSERTION CONCERNING AMENDMENT OF THE PLAN  
SUBSEQUENT TO THE BOARD'S ORDER

As we have seen (*supra*, pp. 37-38), the court accepted and gave weight to assertions in a reply brief filed on behalf of the Committee to the effect that the Plan had been amended after argument of the cause below. We submit that the court's consideration of the statements (R. 230) was contrary to the specific mandate of Congress expressed in the Act. By Section 10 (e), Congress has recognized that in a certain limited class of cases there may be an occasion for adducing additional evidence subsequent to the decision of the Board; and has provided a specific method for bringing such evidence to the attention of the reviewing court. That section provides, in part, as follows:

If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the fail-

ure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, \* \* \* which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. \* \* \*

Even had such an application been addressed to the court under Section 10 (e) it should have been denied on the ground that the proffered evidence was not "material," within the meaning of Section 10 (e) (*supra*, pp. 37-40). Certainly, however, in the absence of any such application, there was no basis whatever for the consideration by the court of these *ex parte* statements.

Section 10 (e) provides an unquestionably valid procedure. *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 226. That procedure contemplates that there shall be an application, with full opportunity to oppose, and that certain conditions shall be met—that the proffered evidence shall be shown to be "material," and that "reasonable grounds for the failure to adduce such evidence in the hearing" before the Board be proved. It contemplates that, if the court is satisfied that these conditions are met, the *Board*, not

the court, shall hear the evidence and make findings upon it, and that the findings shall in turn be entitled to finality if supported by the evidence. Finally, it contemplates that the Board shall have the opportunity of recommending to the court, on the basis of its new findings, whether the order previously entered should be modified, and to what extent.

The contrary course followed by the court below completely nullifies that section. Assertions of fact are made in a reply brief submitted subsequent to oral argument, and are used as a basis for modifying the order of the Board. No opportunity was afforded the Board to oppose the introduction of additional evidence on the propositions of fact asserted. No hearing was given on the vital question of materiality and previous availability. No opportunity was afforded the Board to weigh the evidence, to ascertain the truth, to make findings of fact.<sup>13</sup>

Further, the action of the court below conflicts with the well-settled principle that events which occur subsequent to the order of the Board are not "material" on the question of the validity of the

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<sup>13</sup> Orderly procedure clearly requires that tribunals, judicial as well as administrative, make their findings upon evidence, not upon *ex parte* assertions made after the record has been completed.

Board's order and the propriety of its enforcement by judicial decree. Orders entered upon the basis of the record should be enforced or denied enforcement on the basis of that record, not upon that record plus such additional events as may have transpired since the record was made. Any other rule would deny finality to the administrative process, and would certainly nullify completely the provision in Section 10 (e) of the Act that the court—

\* \* \* shall have jurisdiction \* \* \*  
to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree \* \* \*

This principle has found frequent expression in the opinions of this and other courts under the National Labor Relations Act. It is clearly enunciated in *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 262, where the Court stated (p. 271):

But an order of the character made by the Board, lawful when made, does not become moot because it is obeyed or because changing circumstances indicate that the need for it may be less than when made.

See also *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 230. And in *National Labor Relations Board v. Carlisle Lumber Co.*, 99 F. (2d) 533 (C. C. A. 9th), certiorari denied,



306 U. S. 646, Judge Stephens persuasively stated (p. 541):

If occurrences subsequent to the order of the Board were material it would be impossible to determine the propriety of reinstatement and back wage orders upon the record made at the Board's hearing—the record upon which this Court has a duty to determine the validity of the order and the respondent's duty to comply therewith. In the interval between issuance of the Board's order and the determination of the matter by the Court, the employees discriminated against might find work elsewhere. Since this could be neither affirmed nor negated by the record upon which the Board must reach a decision, the Board could never know whether reinstatement with back wages was an appropriate remedy in a particular case, nor could the Court judge the propriety of the order upon the record made before the Board.

See also *National Labor Relations Board v. Gerling Furniture Mfg. Co.*, 103 F. (2d) 663 (C. C. A. 7th); *National Labor Relations Board v. Oregon Worsted Co.*, 94 F. (2d) 671, 96 F. (2d) 193 (C. C. A. 9th); *National Labor Relations Board v. Biles-Coleman Lumber Co.*, 96 F. (2d) 197 (C. C. A. 9th); *National Labor Relations Board v. American Potash & Chemical Corp.*, 98 F. (2d) 488 (C. C. A. 9th), certiorari denied, 306 U. S. 643; *National Labor Relations Board v. Stackpole Carbon Co.*, 105 F. (2d) 167 (C. C. A. 3d).

Section 10 (e), *supra*, pp. 46-47, providing a procedure for the presentation and consideration of evidence after the order of the Board has been issued, is wholly consistent with this principle. That section specifically provides that the evidence which it is desired to adduce must be "material." As the decisions cited above hold, evidence of events subsequent to the entry of the order of the Board normally cannot meet this qualification since such events are irrelevant to the validity of the order. Section 10 (e) was designed to allow the introduction of *newly discovered* evidence, or evidence improperly excluded by the Board. Indeed, the conditions specified in the section as prerequisites to the consideration of new evidence are, in substance, a restatement of the rules determining the admissibility of newly discovered evidence in courts of law. See *Cyclopoedia of Federal Procedure*, Vol. 5, Sec. 1481.

2. THE ASSERTION CONCERNING THE REFERENDUM ON CONTINUANCE OF THE PLAN AND THE EXTENT OF EMPLOYEE PARTICIPATION IN THE ELECTIONS

The court also gave weight to data concerning the results of a referendum held in June 1938 and the extent of employee participation in elections held by the Plan (R. 229): This data was offered in a letter from respondent's counsel and was excluded by the Board as improperly offered under its rules, and because the evidence was deemed immaterial (*supra*, pp. 35-36). The court below, while not holding that this exclusion was improper, relied

upon the data in setting aside paragraph 2 (a) of the order (R. 229).

We submit that the data should not have been considered by the court. Section 14 of Article II of the Board's Rules and Regulations—Series 1, as amended, upon the basis of which the Board excluded the data from the record (R. 1-15), is set out in the margin.<sup>10</sup> It is certainly valid as an appropriate exercise by the Board of reasonable control over the conduct of the proceedings. *Philadelphia & Trenton Railroad Co. v. Stimpson*, 14 Pet. 448, 463; *Cox v. Hart*, 145 U. S. 376, 380-381; *Fidelity & Deposit Co. v. Bucki & Son Lumber Co.*, 189 U. S. 135, 143; *Franklin v. South Carolina*, 218 U. S. 161, 168; *E. Griffiths Hughes, Inc. v. Federal Trade Commission*, 77 F. (2d) 886, 887-888 (C. C. A. 2d), certiorari denied, 296 U. S. 617. It provides a procedure which is designed not only to secure an orderly handling and disposition of motions by the Board, but also to give to all other interested parties to the proceeding adequate notice and opportunity to be heard. Respondent's counsel was served by the Board with a copy of the Rules

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<sup>10</sup> SECTION 14. All motions made previous to or subsequent to the hearing shall be filed in writing with the Regional Director issuing the complaint, and shall briefly state the order or relief applied for and the ground for such motion. The moving party shall file an original and three additional copies of all such motions for the use of the Board. Immediately upon the filing of such motion, the moving party shall serve a copy thereof upon each of the other parties to the proceeding. All motions made at the hearing (except motions to intervene, as provided in Section 19 of this Article) shall be stated orally and included in the stenographic report of the hearing.

and Regulations, but in any event cannot plead ignorance. Consequently, we submit, the data were properly excluded from the record and, therefore, were improperly relied upon by the court below.

However, even if the action of the Board in excluding the data was, for any reason, erroneous, respondent cannot now complain, since Section 10 (e) of the Act, *supra*, pp. 46-47, provided an adequate remedy by which the proffered evidence could have been added to the record. *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 226. Had respondent pursued that remedy, instead of waiving it, and had the court then decided that the evidence should be received, the parties would have had full opportunity to adduce competent proof concerning the referendum and the elections. It was a plain disregard of Section 10 (e) for the court to treat the unverified and *ex parte* statement of respondent's counsel as an uncontroverted fact of record entitled to finality. The court below erred in giving weight to the letter; proper judicial administration required that the propriety of the disestablishment provisions of the Board's order be determined without reference to the statements contained therein.

### 3. THE EVIDENCE NOT MADE THE SUBJECT OF PARTICULAR FINDINGS BY THE BOARD

As previously noted, in holding the disestablishment order unreasonable the court below referred to and relied upon (R. 228-230) certain items of evidence in the record. The opinion recognizes that the Board had made no particular findings on the

matters in question (R. 228), but the court, characterizing the facts it found as "uncontradicted" (R. 229), stated that they should be taken into consideration, apparently upon the same level as the findings made by the Board (R. 228, 230). As we have shown (*supra*, pp. 42-45), the court erred in concluding that the facts it found were adequate to warrant setting the disestablishment order aside. In addition, we believe that the manner in which the court treated these items of evidence amounted to an assumption *pro tanto* of the fact-finding function of the Board.

The Act charges the Board, not the reviewing courts, with the function of making the findings of fact upon the evidence (Section 10 (c)). Accordingly, where the reviewing court is of opinion that essential findings have not been made—i. e., findings without which no decision is possible or which, if made, would change the result—the proper practice is to remand to the administrative agency or tribunal so that, exercising its fact finding function, it can supply the necessary findings and draw the appropriate inferences therefrom. *Helvering v. Rankin*, 295 U. S. 123, 131-132; *General Utilities Co. v. Helvering*, 296 U. S. 200, 206; *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 270, 271; *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67, 73; *Federal Trade Commission v. Standard Education Society*, 302 U. S. 112, 117. Compare *Federal Trade Commission v. Curtis Publishing Co.*, 260



U. S. 568, 580. Only by this method can effect be given to the statutory provision that the fact findings of the Board shall be conclusive upon review if supported by evidence,<sup>17</sup> a provision designed to carry out the manifest legislative intention that the agency having special knowledge of the particular field should bring its judgment to bear in finding the facts and drawing the proper inferences therefrom.<sup>18</sup> Moreover, in performing that function the agency is equipped to furnish safeguards against improper findings through the procedure of tentative findings, exceptions thereto, and argument thereon, safeguards not available to the reviewing court.

The action of the court below serves perfectly to illustrate the dangers inherent in the contrary course which it pursued. The court sought to justify its action by characterizing the facts upon which it relied as "uncontradicted." Yet actually, as already noted, the court fell into error in stating that respondent had not interfered with freedom of choice; that it had not discouraged union activity among the employees; and that all expenses of elections under the Plan since 1935 have been assumed by the employees (*supra*, pp. 43-45).

<sup>17</sup> Section 10 (e), (f). See *Washington, Virginia and Maryland Coach Co. v. National Labor Relations Board*, 301 U. S. 142, 147; *National Labor Relations Board v. Columbian Enameling and Stamping Co.*, 306 U. S. 292.

<sup>18</sup> House Report No. 1147, 74th Cong., 1st Sess., pp. 4-8, 11, 23; Senate Report No. 573, 74th Cong., 1st Sess., pp. 4-6, 14-15.

It would seem, however, to be entirely sufficient in the present case to point out that no essential finding was lacking in the Board's decision. The findings of the Board were on the whole record, and being sufficient to support the order, with no material omission, special findings were not required as to the particular portions of the evidence relied upon by the Court.

#### CONCLUSION

It is respectfully submitted that the decision of the lower court, insofar as it refuses to enforce paragraph 2 (a) of the order of the Board issued against respondent, should be reversed, and the cause remanded with directions to grant the order full enforcement.

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OCTOBER 1939.





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CHARLES ELMORE LORLEY

No. 20

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*In the Supreme Court of the United States*

OCTOBER TERM, 1939

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

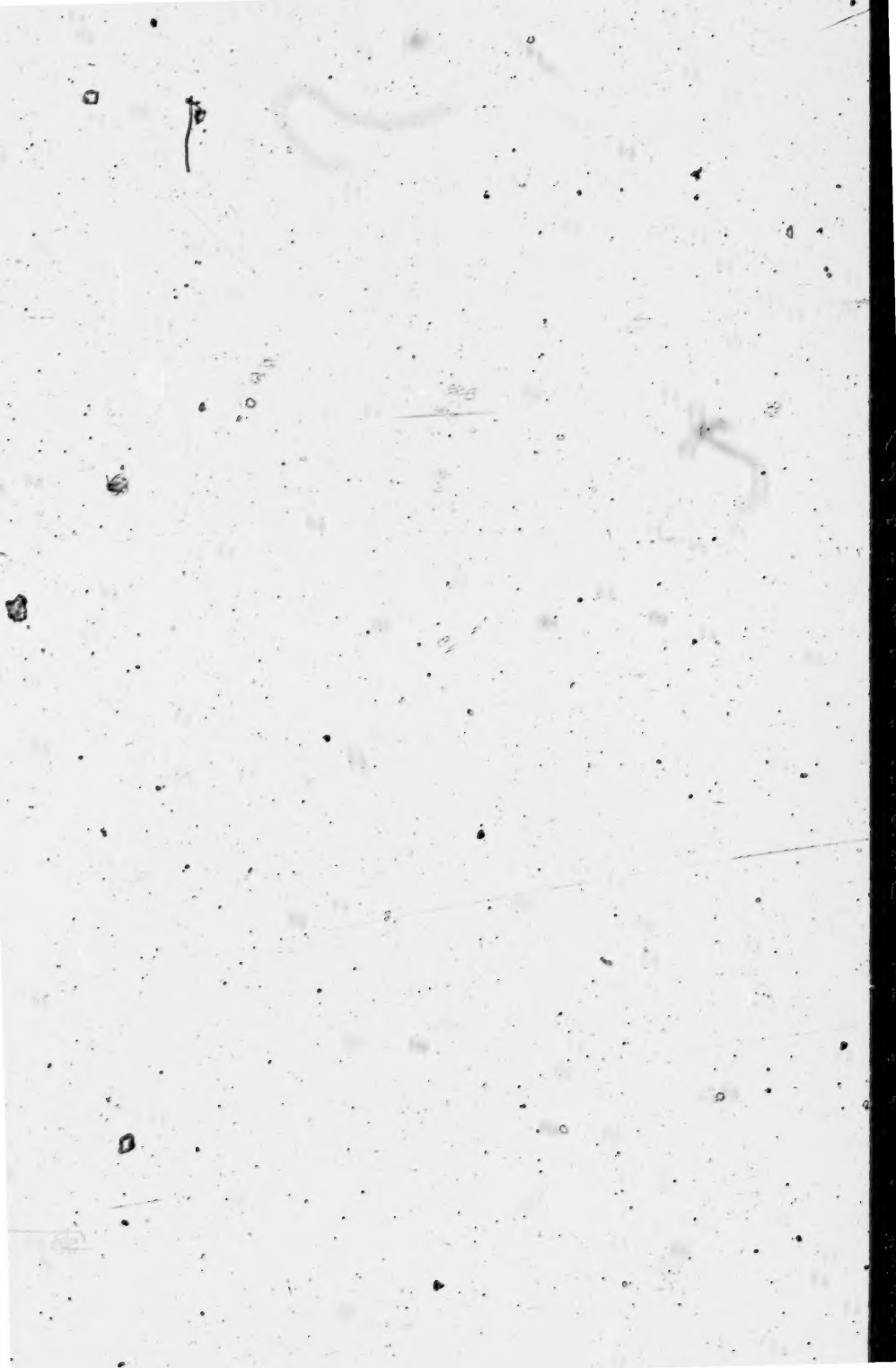
NEWPORT NEWS SHIPBUILDING & DRY DOCK COM-  
PANY, A CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS  
BOARD

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# **In the Supreme Court of the United States**

**OCTOBER TERM, 1939**

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**v. N**

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**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT  
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**REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS  
BOARD**

The briefs filed on behalf of respondent and the intervenor contain several assertions to which reply should be made.

1. Both respondent and the intervenor rely extensively (Resp. Brief, pp. 2-3, 19-20, 29, 33-36; Int. Brief, pp. 2, 6-8, 14) upon a stipulation entered into at the hearing by counsel for the parties (R. 75-77). The stipulation provided that "the following is the evidence which will be submitted without contradiction for the intervenor \* \* \*

(R. 75). Emphasizing the phrase "without contradiction" (Resp. Brief, pp. 2, 3, 19; Int. Brief, pp. 2, 8), respondent and the intervenor construe the stipulation as an agreement by the Board to certain propositions of fact, and level against the Board the serious charge of repudiating this agreement.

Neither respondent nor intervenor refers to the extensive colloquy explaining the stipulation which took place at the time it was read into the record. This colloquy was not included in the record printed in this Court, but appears at pages 1063 to 1066 of the typewritten transcript on file with the clerk and is set forth in an appendix to this brief.<sup>1</sup> The explanatory colloquy leaves it without question that counsel were not stipulating to facts, but were merely agreeing that the intervenor would introduce evidence along the lines set forth in the stipulation; and that the phrase "without contradiction" meant only that intervenor's witnesses would not contradict each other but that, on the contrary, "each witness would corroborate the other" (Transcript, p. 1066). Consequently, the stipulation is no more than the customary device to save calling numerous witnesses by agreeing what their testimony would be and that it would

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<sup>1</sup> By agreement (R. 237-239), much of the typewritten transcript was not included in the printed record. The Government did not include the explanatory colloquy only because there was no ground for anticipating that an attempt would be made to ascribe to the stipulation the meaning which respondent and intervenor now seek to give it.

be uniform. The evidence contained in the stipulation is, of course, entitled to be considered, along with all the other evidence in the record, in determining whether the Board's findings concerning the propriety of the disestablishment remedy are reasonable. We think that the evidence set forth in the stipulation is plainly insufficient to show that the Board's conclusion in that respect was unreasonable because without substantial support upon the entire record.<sup>2</sup>

2. Further, even if, contrary to its real character, the stipulation were one of facts, respondent gives to it, particularly paragraph 3 (R. 76), a construction beyond its true meaning. It interprets paragraph 3 to mean that respondent did not in any way interfere with the employees' freedom of choice of collective bargaining representatives within the meaning of the Act (Resp. Brief, pp. 20, 34). Respondent does not attempt to explain why counsel for all parties should have continued to litigate the issue whether the relations between respondent and the revised Plan violated Section 8 (2) and (1) of the Act, if the Board had agreed that no violation of the Act had occurred. The answer is that this paragraph of the stipulation refers only to the selection, within the Plan's framework, of those of the representatives who were elected by the em-

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<sup>2</sup> As we have set forth in our main brief (pp. 18-19), the further question whether the Board's findings that respondent violated the Act are supported by substantial evidence is not before the Court.

ployees; it does not refer to the equivalent number of representatives appointed by respondent prior to June 30, 1937. (See stipulation, par. 11, R. 77.) Paragraphs 2 through 9 dealt exclusively with the election of representatives under the Plan and the evidence referred to in those paragraphs was designed to establish that the elections were free. Accordingly, this paragraph means only that respondent did not exert its influence in favor of or against particular candidates elected by the employees under the Plan. Counsel for intervenor apparently so understands the stipulation (Int. Brief, p. 5). The domination, interference, and support found by the Board, accomplished by means other than interference with the elections, as reviewed in our main brief (pp. 18-30), was not a subject of the stipulation. Indeed, counsel for respondent manifested their understanding that this was the meaning of the stipulation in their brief to the court below, and by continuing to try the case after the stipulation was submitted.

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Respondent there argued as follows (p. 32):

"3. How has petitioner *interfered* with the administration of the labor organization whose structure is set forth in the plan? The *answer* is that petitioner has not so interfered.

"The undisputed *testimony* is that at no time has petitioner sought to influence, encourage or discourage the election of any representative (Stipulation, sec. 3: 8, Appendix, 65, 66; Robeson, 60). There is no testimony and the Board has not contended that the company or any employee with, or above the rank of supervisor has ever in any way participated in any elections held under the plan (Stipulation, Sec-



3. Respondent and the intervener attack (Resp. Brief 3-4, 28, 36-38; Int. Brief, pp. 2, 16) the Board's contention that certain data excluded by the Board should not have been considered by the court below (Bd. Main Brief, pp. 51-53) as a "repudiation" of the supplemental certificate filed by the Board. The argument is that the Board, by certifying the data as "a part of the record" (R. 215), waived compliance with its rules and reversed its prior order of exclusion (R. 193-194). The certificate clearly did not have that effect. Its plain purpose was merely that of putting before the court data excluded from evidence before the Board so that the court might determine whether the exclusion was proper. We have not contended that the court should not have considered the data because it was not part of the transcript of record filed in the court below. Our stated position is that the data was correctly excluded by the Board; and that the court below could not properly consider it as evidence in the absence of a motion by respondent to adduce additional evidence before the Board, as the statute requires (Bd. Main Brief, pp. 51-53). This position is, of course, entirely consistent with the Board's supplemental certificate.

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tions 3 and 8, Appendix, 65, 66). Nor is there any testimony that any of the representatives appointed by petitioner pursuant to the 1927 plan ever in any way interfered with the *administration* of the organization. Since the 1937 revision, of course, petitioner is denied representation in the organization."

4. Respondent urges (Brief, pp. 53-54) that the Board's failure to make particular findings concerning evidence adduced at the hearing did not preclude consideration of such evidence by the court below. We do not contend to the contrary. As stated in our main brief (pp. 42, 54), such evidence was open to consideration by the court in determining whether the Board's findings were supported by substantial evidence and whether all essential findings had been made.

5. Respondent's contention (Brief, pp. 81-85) that the court below did not approve the Board's findings that the Act was violated is intelligible only in the light of respondent's repeated assumption (Brief, pp. 25-26, 33, 82-83, 85) that the Act did not become operative until it was held valid by this Court. The court below did not enforce the cease and desist provisions of the Board's order and the requirement that respondent post notices in the plant (R. 235-236) upon the basis "of acts lawful when done but which had ceased after they became unlawful" (Resp. Brief, p. 85); in fact, the court expressly referred to respondent's participation in the Plan which "persisted after the enactment of the statute \* \* \* (R. 230-231).

6. The revision of June 1937 could not, even had it completely terminated the means whereby respondent's control was effected, either change the fact that for two years respondent had engaged in

practices proscribed by the Act or lessen the need  
that the effects of such violations be remedied.

Respectfully submitted.

✓ ROBERT H. JACKSON,  
*Solicitor General.*

✓ CHARLES A. HORSKY,  
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MORTIMER B. WOLF,  
*Attorney,*  
*National Labor Relations Board.*

NOVEMBER 1939.

## APPENDIX

The following transpired between the fourth and fifth lines on page 78 of the printed record (type-written transcript, pp. 1063-1066) :

Trial Examiner PARADISE. There is just one question which I have concerning this stipulation. In paragraph 8 you state that the "nominations and elections are by secret ballot and so conducted as to avoid undue influence or interference with voters in any manner whatsoever, and to assure fairness in the counting of ballots."

I presume that you are referring to nominations and elections under the plan as revised June 30, 1937, are you not?

Mr. KEARNEY. All of the Plan—all of it since the Plan has been in force.

Trial Examiner PARADISE. There is some testimony by Mr. Blanton to the contrary.

Mr. KEARNEY. I understood that Mr. Blanton's testimony was that some boy, whom he did not know, told him that the box was opened, or that some people voted on the night shift, which we think is a fact, and that there was nothing at all irregular about it, because, beginning in 1935, they voted from one o'clock until five o'clock, and then made provision for the night shift. We have the tally sheet showing the vote there. We have got the original tally sheet here and can introduce that into evidence to clear up that situation.

Trial Examiner PARADISE. What I am getting at is that it is obvious from his testimony that there was something radically

wrong with the supervision at the polling place, when you could get the vote up to date at any particular time, and decide how many votes you needed, one way or the other, to swing the election.

Mr. KEARNEY. Mr. Bell testified that Mr. Blanton told him that. When Mr. Blanton went on the stand Mr. Blanton testified that some boy had told him something about something that went on; but we are prepared to introduce the tally sheet to show that there was not any irregularity.

Trial Examiner PARADISE. I presume that nothing in this stipulation is intended to counteract or to leave any concession in regard to any testimony thus far given in the case with regard to the Employees' Representative Plan?

Mr. BLUM. Oh, no. I specifically agreed that this would be the evidence introduced by the other side, and the preamble shows that fact.

Mr. KEARNEY. I might say to the Examiner, in order that it might be perfectly clear, (I have not told Mr. Blum this), what I understand the fact in regard to that election was this—

Trial Examiner PARADISE. Let us not go into it. If you have any testimony on it you will have an opportunity to present it.

Mr. KEARNEY. What I was trying to do was to stipulate on that proposition so we could eliminate testimony. If you want it in evidence we can put it in evidence.

Trial Examiner PARADISE. Of course, Mr. Blum has control of the Board's case, and not I. It is up to him to stipulate what he wishes to stipulate, and not to stipulate as to other matters. Frankly, the only reason I raised the point was that in the first para-



graph of the stipulation you inserted the words "without contradiction," which do not appear in the original draft of the stipulation.

Mr. KEARNEY. You notice the word "facts" is in there; that after he raised the objection, 1, 2, 3, 4, down on the 5th line, we struck out "the following are the facts," because the attorney for the Board was not willing to admit that they were the facts—

Trial Examiner PARADISE. That is rather surprising.

Mr. KEARNEY—on stipulation. As to what the facts were, I thought we agreed these were the facts.

Mr. BLUM. They were. The words "without contradiction" gave me the same trouble that they have given you, Mr. Examiner. They also appear in paragraph 13.

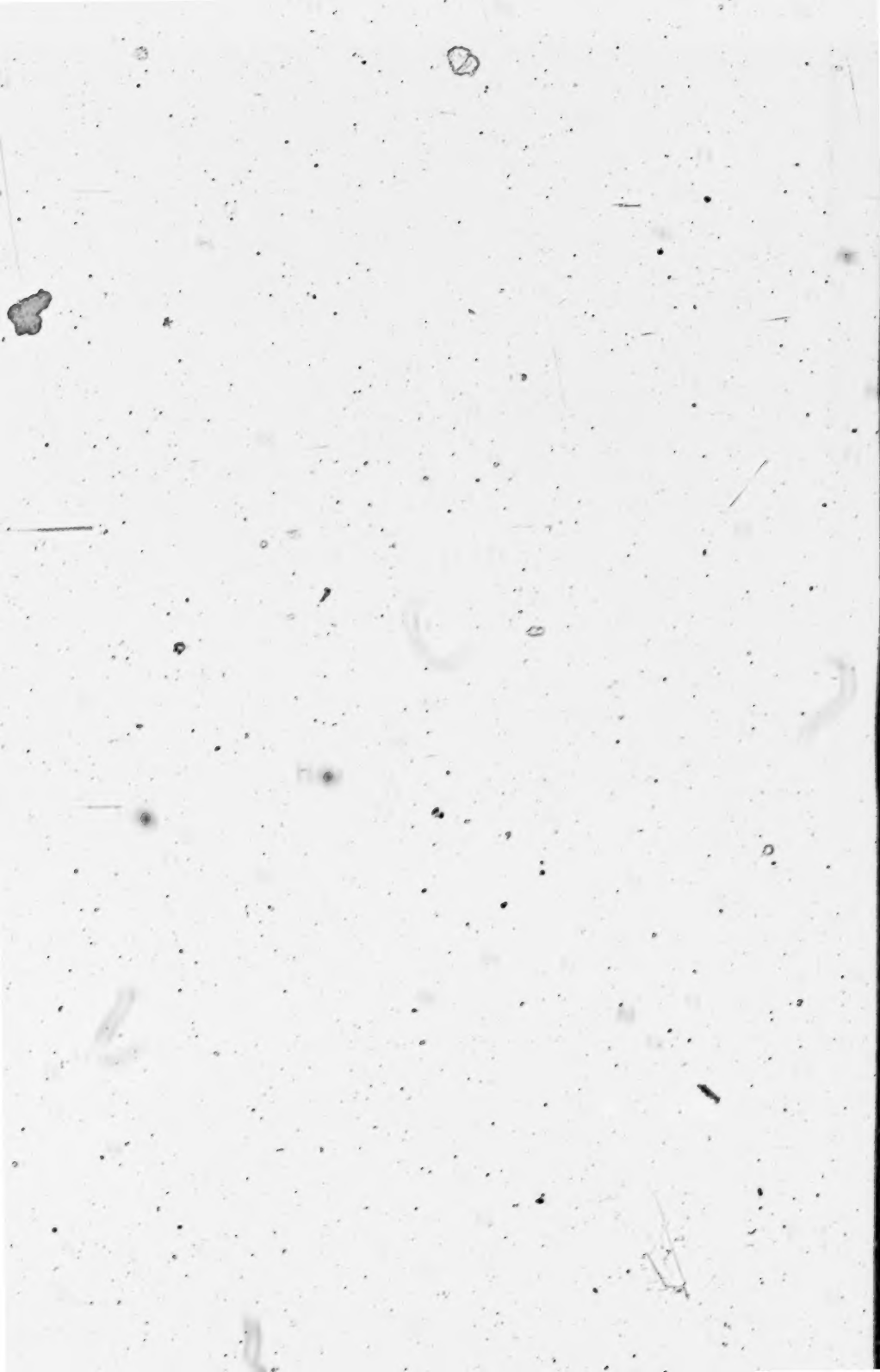
I want it specifically understood between counsel and myself that I have agreed, in private, that these words "without contradiction" do not mean that if I were able to put on any rebuttal testimony—that the words "without contradiction" did not apply to that. What they meant by "without contradiction" was that each witness would corroborate the other.

Trial Examiner PARADISE. In other words, "without contradiction" does not mean that no contradiction is to be found from any previous testimony or subsequent testimony given in the case?

Mr. BLUM. That is right.

Trial Examiner PARADISE. All right. Proceed.





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CLERK

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1938

No. 757

20

NATIONAL LABOR RELATIONS BOARD,  
Petitioner

vs.

NEWPORT NEWS SHIPBUILDING AND  
DRY DOCK COMPANY

On Petition for a Writ of Certiorari to the United States  
Circuit Court of Appeals for the Fourth Circuit

BRIEF FOR THE NEWPORT NEWS SHIPBUILDING  
AND DRY DOCK COMPANY IN OPPOSITION

FRED H. SKINNER,

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H. H. RUMBLE,

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building and Dry Dock Company.*





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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1938

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**No. 767**

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**NATIONAL LABOR RELATIONS BOARD,**  
Petitioner

*vs.*

**NEWPORT NEWS SHIPBUILDING AND  
DRY DOCK COMPANY**

---

**On Petition for a Writ of Certiorari to the United States  
Circuit Court of Appeals for the Fourth Circuit**

---

**BRIEF FOR THE NEWPORT NEWS SHIPBUILDING  
AND DRY DOCK COMPANY IN OPPOSITION**

---

The court below held that there was no warrant in the evidence for the Board's ultimate finding that the labor organization in question was not suitable and competent to serve the employees as an independent bargaining agency.

The petition challenges that holding. The question involved, therefore, is whether a particular labor union is, or is not a suitable agency to represent the employees.

Every such case must be decided upon its own facts. A decision by this Court that the particular

union in question is, or is not such agency, will afford no guide in other cases.

The facts and circumstances may be widely different. The facts in this case are wholly dissimilar to those in the cases cited in the petition, viz, *National Labor Relations Board v. Pennsylvania Greyhound Lines*, 303 U. S. 261; *National Labor Relations Board v. Pacific Greyhound Lines*, 303 U. S. 272; *National Labor Relations Board v. Fansteel Metallurgical Corporation*, No. 436, decided February 27, 1939; *Consolidated Edison Co. v. National Labor Relations Board*, Nos. 19, 25, decided December 5, 1938.

There is no question of general public interest here, nor could a decision in this case serve as a guide in the future administration of the National Labor Relations Act, unless this Court is prepared to hold that no unaffiliated labor union composed of employees of a single employer will be tolerated. Such holding we do not apprehend. It would be contrary to express provisions of the statute. Thus:

"Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their *own choosing*; and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection." (Italics ours).

#### **SOME MISLEADING STATEMENTS CONTAINED IN BOARD'S PETITION**

The petition states (pages 4 and 6) that the complaint and hearings in this case were pursuant to a charge filed with the Board by the Industrial Union

of Marine and Shipbuilding Workers of America. It fails to state that the headquarters of that organization are in Camden, New Jersey; and that it does not represent the employees of the company. The fact is that the employees of the company are represented by the Employees' Representative Committee. The employees intervened in the proceedings before the Trial Examiner, appeared and argued their case before the Board and intervened and argued the case in the proceedings before the Circuit Court of Appeals. In each such instance the employees denied the allegations of the Board's complaint with respect to their Plan of Employees' Representation and challenged the Board's right to take any action in the premises.

The petition states (page 5) that the Company, by its answer, admitted "that, in cooperation with its employees, 'it aided in putting into force and effect at its shipyard a plan of employee representation'." In purporting to quote the alleged admission, the Board omits a *vital* part of the Company's answer. The alleged admission, being paragraph 7 of the Company's answer (II R. 12)<sup>1</sup> is in these words and figures, to-wit:

"(7) The Shipyard denies each and every of the allegations of paragraph 7 of said complaint except that it admits that in cooperation with its employees in 1927 it aided in putting into force and effect at its shipyard a plan of employee representation known as 'Representation of Employees.' The Shipyard alleges that

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<sup>1</sup> The references to the record herein are to Volumes I, II, and III as explained in the petition.



said plan of representation of employees is an independent labor organization to which its employees belong." (Italics ours)

Petitioner's statement wholly ignores the material fact, stated in the answer, that what the Company did was done in the year 1927. The alleged admission had and has no relation to any other period of time. The Company made no admission such as the Board attributes to it. What the Company did in 1927 was neither illegal nor morally wrong.

The petition states (page 8) that "The Plan" of employee representation "dates from the year 1927, *when it was first put into effect by respondent in cooperation with its employees.*" (Italics ours). The Company's answer. (Para. 7) (II R. 12) denies that the Company put the plan into effect and there is no evidence that the answer does not correctly state the fact. The Company did not put the plan into effect. The Plan was put into effect by the employees after they had voted on its adoption or rejection, and it was adopted by them by a vote of 2,430 to 204. (II R. 65).

The petition states (page 10) that the May 1937 revision of the Plan "*originated in the General Joint Committee, one-half of the members of which were management representatives, and was referred for suggestion to the similarly constituted Executive Committee and to the elected representatives separately.*" (Italics ours). The uncontradicted evidence is that the 1937 revision was initiated by Blanton, Chairman of the Employees' Plan of Representation, himself, an elected representative of the employees. He so testified. (II R. 40; 62). He was the Board's witness and

his testimony was neither contradicted nor explained away.

The petition states (page 10) that "The personnel manager and the general manager of respondent each took an *active* part in the (1937) revision of the Plan." (Italics ours). The statement is inaccurate and misleading. Blanton, the Board's witness, testified (and his testimony was uncontradicted) that "I made the original proposition (of revision) in *each* and *every* case." (II R. 40). (Italics ours). In respect to the May 1937 revision Blanton called on the personnel manager and asked to be advised of the Company's position. (II R. 62). The general manager was called in the conference (II R. 40; 62). Blanton then submitted his proposed 1937 revision to the general manager who found that Blanton's plan permitted Company representation on committees and that these representatives were permitted to vote. The general manager proposed that the Company should *not* be accorded these rights and Blanton's plan was changed so that the Company should not have representation on committees. (II R. 41). To this extent, and to this extent only, did the Company's personnel manager and general manager participate in the May 1937 revision of the Plan.

The petition states (page 11) that the 1937 Plan provides that the action of the Employees' Representative Committee "shall be final and become effective upon agreement by the Company." The statement is misleading because the petition fails to state the fact that although the provisions of Article VI have never been invoked, they were understood by

both the Employees and the Company to apply only to the contract rights of the Company under the Plan, and were not intended to affect or restrict the independence of the committee in its capacity as representative of the employees.

The petition states (page 11) that the 1937 plan provides that any article of the Plan may be amended by two-thirds of the membership of the Committee "unless disapproved by the Company within 15 days after passage." The statement is misleading because petitioner did not state the fact that although the provisions of Article IX have never been invoked and the Company has agreed to each and every of the numerous amendments proposed by the employees, the provision was understood by the Employees and the Company to mean that the Company should have the right to exercise its disapproval only in the event a proposed amendment should affect its contract rights under the Plan. The uncontradicted evidence is that the Plan is a contract binding the Company as well as a plan of employee representation.\*

\* This is also made apparent by the preamble by which "the principles of employee representation are hereby *reaffirmed* by the employees and the Company and to those ends the following rules are hereby adopted" (Italics ours); by Article VII, providing a procedure of adjustment by which any employee (or group of employees) may present any matter requiring adjustment *either* in person or through his representative to the elected representative committee or to the company, as the employee may elect; and by Article VIII, by which the Company *guaranteed* the independence of representatives against discrimination because of anything the employee-representative as such may do. Obviously the plan is a contract binding on the Company.

The petition states (page 12) that a copy of Committee minutes is "regularly sent to respondent's personnel manager." Petitioner failed to state that when this was done by the Committee it was wholly voluntary on their part, and was done only for the purpose of informing the Company of such matters as the Committee wished the Company to be advised (II R. 61). Petitioner failed to state that the Committee is under no obligation to send copies of its minutes to the Company (I b).

**THE QUESTION STATED IN THE PETITION TO BE  
THE "QUESTION PRESENTED" IS NOT  
INVOLVED IN THIS CASE**

The petition states that the "Question Presented" is

"Whether, upon findings that respondent has dominated and interfered with the formation and administration of a labor organization of its employees and contributed financial and other support thereto, and is dominating and interfering with the administration of said labor organization, all contrary to Section 8 (2) of the National Labor Relations Act, the National Labor Relations Board, in addition to ordering respondent to cease and desist from such interference, properly required respondent to withdraw all recognition from said organization as representative of its employees for purposes of collective bargaining, and completely to disestablish said organization as such representative."

That this question arises here we deny. On the contrary, the Circuit Court of Appeals expressly recognized that upon such a finding, if supported by sub-

stantial evidence, the Board has authority to require the employer to withdraw all recognition from the organization as the representative of his employees.

Thus, the majority opinion, (I R. 418):

"When the Board finds that an employer has created and fostered a labor organization of its employees, and has dominated its administration, in violation of Section 8 of the National Labor Relations Act, and the finding is supported by substantial evidence, the Board has authority under section 10 (c) of the Act to require him to withdraw all recognition to the organization as the representative of his employees. This rule was established in *Labor Board v. Greyhound Lines*, 303 U. S. 261, and *Labor Board v. Pacific Lines*, 303 U. S. 272, and has been followed and applied by this court in *National Labor Relations Board v. Freezer*, 95 F. 2d 840; *National Labor Relations Board v. Wallace Mfg. Co.*, 95 F. 2d 819; *National Labor Relations Board v. Eagle Mfg. Co.*, 99 F. 2d 930, *Virginia Ferry Co. v. National Labor Relations Board*, decided January 9, 1939; see also, *National Labor Relations Board v. Oregon Worsted Co.*, 9 Cir., 96 F. 2d 193; *National Labor Relations Board v. America Potash & C. Corp.*, 9 Cir. 98 F. 2d 488."

The Circuit Court of Appeals was careful to point out that it has uniformly followed and applied the rule laid down by this Court in *National Labor Relations Board v. Pennsylvania Greyhound Lines*, *supra*, and *National Labor Relations Board v. Pacific Greyhound Lines*, *supra*.



What the court below did do was to disapprove the ultimate finding of the Board to the effect that the Employees' Representative Committee is incapable of serving the employees as their genuine representative for the purpose of collective bargaining. The court held that the inference that the Employees' Representative Committee is "still the creature of the Company," to use the language of the Board, cannot reasonably be drawn (Opinion I R. 420); that "there is no reasonable ground upon which the disestablishment of the organization of the men can be sustained"; and that the "purpose of the act will not be served by destroying an organization that is without doubt the chosen representative of the great majority of the employees." (Opinion, I R. 421).

#### **THE DECISION BELOW IS NOT IN CONFLICT WITH DECISIONS OF THIS COURT**

Petitioner states that the decision below is in probable conflict with decisions of this Court, citing *National Labor Relations Board v. Pennsylvania Greyhound Lines*, *supra*; *National Labor Relations Board v. Pacific Greyhound Lines*, *supra*; *National Labor Relations Board v. Fansteel Metallurgical Corporation*, No. 436, decided February 27, 1939, and *Consolidated Edison Co. v. National Labor Relations Board*, Nos. 19, 25, decided December 5, 1938.

There is no substantial similarity between the facts in this case and those in any of the cases cited by petitioner.

In each of the three first above mentioned cases the employer was violently anti-union. In some, employees

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were coerced into joining company unions, with threats of discharge in case the employee joined another union. In the Fansteel case the company instigated the formation of a union in the midst of a bitter labor war in its plant. The respondent here has never been anti-union.

"There has been no action on the part of the management or by any officer or persons in a supervisory capacity in the shipyard to discourage membership in any union." (Opinion I R. 419).

There was no labor dispute, or trouble of any kind between respondent and its employees at the time the charges were preferred and heard by the Board, nor has there been before or since.

"For more than forty-three years prior to the hearing, there has been no labor dispute or disturbance that has interfered with the operation of the yard." (Opinion I R. 419).

If, as the Act professes, and this court has held, the purpose of the Act is to protect commerce by the promotion of industrial peace, its aim is satisfied by leaving the Committee undisturbed; as the court has left it. There is no labor dispute at this yard.

Nor has respondent dominated or interfered with the Employees' Representative Committee.

"During the whole life of the plan from 1927 until the time of the hearing before the trial examiner in August and September 1937, the company has not interfered with, discouraged, encouraged, or in any way prevented the

selection by the employees of representatives of their own choosing." (Opinion I R. 418).

These and other facts referred to in the opinion are shown by stipulations made by the Board (II R. 64 *et seq.* See also II R. 180), and by uncontradicted testimony (II R. 60, 64, 72, 73 and 74).

The Employees Representative Committee is the choice of the great majority of the Company's employees as their representative for the purpose of collective bargaining.

"On June 7, 1938, after the employees had been notified of the recommendation made by the trial examiner on March 9, 1938, that the Employees' Representative Committee be disestablished, a referendum with reference to the continuance of the plan was held. 3,455 workers voted to continue the plan, 562 voted to discontinue the plan and 51 ballots were void."

"On June 14, 1938, the annual election was held. 4,233 out of 4,889 men present at work elected 43 representatives to serve from July 1, 1938, to June 30, 1939. 42 votes were thrown out." (Opinion I R. 419 and Supplemental Certificate of Board II R. 180).

"The management of the Shipbuilding Company has always been willing to negotiate with the Committee in regard to any matter affecting wages, hours, or conditions of work, and the Committee has been successful from time to time in securing changes in these respects beneficial to the men." (Opinion I R. 419 and stipulation II R. 64 *et seq.*)

The court below, sustaining the contentions of both respondent and intervening employees, with re-

spect to the meaning of language which was certainly understood by them, construed the provision of Art VI of the Plan to the effect that action of the Committee shall "be final and become effective upon agreement by the company" and of Art. IX, amendment of the Plan, as relating only to matters affecting the Company's rights under the plan. (Opinion I R. 420). Whether the objection to these articles has become moot by their elimination since the Board's order, is therefore a question which does not arise here.

To suppose that there is any analogy between the tranquil situation existing at this yard and the turbulent labor conditions involved in the Greyhound and Fansteel cases, is to lose all sense of proportion and substitute fantastic theories for actualities.

The principal questions involved in the Consolidated Edison case, *supra*, aside from that of jurisdiction, related to the validity and effect of contracts between the Company and a union affiliated with an outside labor organization. No similar questions arise here.

The decision below does not transgress the rule laid down in *Helvering v. Rankin*, 295 U. S. 123-134, and similar cases. The Board's finding that at the time of the hearing the Employees' Representative Committee was incapable of serving the employees as an independent bargaining agency, is an ultimate finding which was subject to judicial review.

"The ultimate finding is a conclusion of law or at least a determination of a mixed question of law and fact. It is to be distinguished from the findings of primary, evidentiary, or circumstantial facts. It is subject to



judicial review and, on such review, the Court may substitute its judgment for that of the Board."

*Helvering v. Tex-Penn Oil Co.*, 300 U. S., 481, at page 491.

The facts considered by the court below in disapproving the Labor Board's ultimate finding were, to use the language of the court, "proved either by uncontradicted evidence or by stipulation of counsel," and "bear directly upon the inquiry whether or not the Employees' Representative Committee is capable of representing the employees in collective bargaining, free from domination or interference by the employer." They are set out in the opinion (I R. 418). The greater part of the facts referred to by the court are shown by a stipulation of the Board made at the hearing (II R. 64) and by a certificate of the Board correcting and supplementing the record filed in the Circuit Court of Appeals. (II R. 180 *et seq.*).

In effect the court below held that the Board may not ignore its own stipulations and disregard uncontradicted evidence material to the issue.

In the exercise of its judicial function the Board may not cull out such parts of the evidence as tend to support a preconceived theory or any particular theory of the case, but must give consideration to all of the evidence adduced before it, to all of the facts proved at the hearing which have a material bearing upon the issue it is called upon to decide. This is not only in harmony with the principles of judicial procedure universally recognized and applied in our courts, but

is expressly required by Section 10 (c) of the National Labor Relations Act itself, by which the Board is required to make its findings "upon all the testimony taken."

This Court has only recently taken occasion to point out that the statute with respect to a judicial review of orders of the National Labor Relations Board follows closely the statutory provisions in relation to the orders of the Federal Trade Commission. *Ford Motor Company v. National Labor Relations Board*, Nos. 182 and 193, decided January 3, 1939, ..... U. S. ...., 83 L. Ed. 229.

In *Federal Trade Commission v. Curtis Publishing Company*, 260 U. S., 568, 579, this Court, in passing upon the scope of the right and duty of the court in reviewing orders of the Federal Trade Commission, held that as the statute grants jurisdiction to make and enter, upon the pleadings, testimony, and proceedings, a decree affirming, modifying, or setting aside an order, the court must *also* have power to examine the *whole* record and *ascertain for itself the issues presented*.

#### THE DECREE BELOW

Petitioner states that the court below upheld the conclusion of the Board that respondent had been guilty of violations of Section 8 (1) and (2) of the Act in dominating, interfering with and contributing support to the Plan.

This is a clear misconception of the action of the court. The court did not hold that respondent had been "guilty" of violating the Act in any par-

ticular. That respondent did cooperate with the employees in the establishment of the plan in 1927; that it did contribute to its support prior to the 1937 revision, when, following the decision of this Court, April 12, 1937, upholding the constitutionality of the Act, the plan was amended in a sincere effort to make it conform to the Act in both letter and spirit, are facts which no one questions. To that extent, and to that extent only, the court upheld the Board's findings. But it disapproved, as not supported by substantial evidence, the ultimate finding of the Board that the Committee is still the creature of the Company; that it is company-dominated and incapable of representing the employees for purposes of collective bargaining. In the light of this holding the decree of the court below is perfectly consistent.

A "cease and desist" order does not necessarily imply that the thing inhibited is being practiced up to and at the time of the order. At times it is intended to operate only to prohibit future acts. This was true of the portion of the Board's order in the Consolidated Edison case, *supra*, which related to industrial espionage.

As to that this Court said:

"With respect to industrial espionage, the companies say that the employment of 'outside investigating agencies' of any sort had been voluntarily discontinued prior to November, 1936, but the Board rightly urges that it was entitled to bar its resumption."

See also *Guarantee Veterinary Co. v. Federal Trade Commission*, (C. C. A. 2) 285 Fed. 853.

*Fox Film Corporation v. Federal Trade Commission*, (C. C. A. 2) 296 Fed. 353.

From the whole tenor of the majority opinion below, it is apparent that when the court enforced the negative provisions of the Board's order,<sup>a</sup> it meant only to bar the resumption of acts lawful when done, but which had ceased, after they became unlawful.

Portions of the order could apply to nothing else than future acts. For instance, respondent is directed to cease and desist from

"the formation or administration of any *other* labor organization of its employees, and contributing support to \* \* \* any *other* labor organization of its employees." (Italics ours) (I R. 28).

In *National Labor Relations Board v. Pennsylvania Greyhound Lines*, *supra*, the order of the Board requiring withdrawal of recognition from the union in question was upheld by this Court. But the Court recognized that there may be cases in which such an order would be inappropriate. Thus, at page 268, Mr. Justice Stone, speaking for the Court said:

"We may assume that there are situations in which the Board would not be warranted in concluding that there was any occasion for with-

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<sup>a</sup> For the information of the Court, we may state that respondent has posted the order required by the Circuit Court of Appeals in accordance with the requirements of its decree, and notified the Board of that fact, as directed by said decree, and that this notice was given before the petition herein was filed.

drawal of employer recognition of an existing union before an election by employees under para. 9 (c), even though it had ordered the employer to cease unfair labor practices."

The court below believed that this case presented such a situation. It said: (I R. 421)

"The National Labor Relations Act was designed to deal with the *actualities* of industrial life in this country and to promote peace in relations between employer and employees by securing to employees the right, too frequently denied in the past, to organize and bargain collectively, with complete freedom and independence, through representatives of their own choosing. The purpose of the Act will not be served by destroying an organization that is *without doubt* the chosen representative of the great majority of the employees, even though it may be thought that their decision to restrict their spokesmen to American-born fellow workmen is unwise. To deny them this right is to ignore the express command of the statute." (Italics ours).

We respectfully submit that the Circuit Court of Appeals, dealing with the actualities of this case as disclosed by the record, rather than indulging in fanciful theories, reached a result that is not only fair and just, but that will undoubtedly best effectuate the purposes of the Act.



No questions worthy of review are presented herein. The petition should be denied.

Respectfully submitted,

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April 12, 1939.





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BRIEF FOR THE EMPLOYEES' REPRESENTATIVE COMMITTEE  
OF THE NEWPORT NEWS SHIPBUILDING AND  
DRY DOCK COMPANY.

---

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1939.

No. 767. 20

NATIONAL LABOR RELATIONS BOARD

vs.

NEWPORT NEWS SHIPBUILDING AND DRY  
DOCK COMPANY.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE  
FOURTH CIRCUIT.

FRANK A. KEARNEY,  
Attorney for the Employees'  
Representative Committee.

PERCY CARMEL,  
Hampton, Virginia,  
of Counsel.





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BRIEF FOR THE EMPLOYEES' REPRESENTATIVE COMMITTEE  
OF THE NEWPORT NEWS SHIPBUILDING AND  
DRY DOCK COMPANY.

---

THE QUESTION PRESENTED.

Whether or not the Employees' Representative Committee is capable of representing the employees in collective bargaining, free from domination or interference by the employer.

## STATEMENT.

The Employees' Representation Plan was put into effect in the Newport News Shipbuilding and Dry Dock Company in 1927.

Certain employees conferred with the Management of the Newport News Shipbuilding and Dry Dock Company with respect to instituting this plan. It was agreed that if the majority of the employees were favorable to the plan that the management would recognize it. By a vote of 2,430 for the plan to 204 against the plan it was adopted.

Under the plan, the employees elected free from interference, domination or molestation by the employer their own representatives, and the employer selected a similar number of management representatives.

These two groups met and discussed and negotiated matters affecting the terms and conditions of their employment and the problems of their work.

With minor changes this plan remained in effect until the constitutionality of the National Labor Relations Act had been determined.

When the propriety of the general joint committee was raised it was decided to eliminate the general joint committee and to discontinue the meetings between the employees' representative and employer's representatives.

It has never been contended, nor has any evidence been introduced in this case to show that the elected employees' representatives were not of the employees' own choosing, and it was agreed and stipulated that the company has never interfered with, discouraged, encouraged or in any way prevented or sought to prevent the selection of the employees' representatives of their own choosing.

On June 15, 1937, 5,718 out of 6,300 eligible voters at work on that day, elected 43 representatives on the Employees' Representative Committee to serve from July 1st, 1937, to June 30, 1938.

On June 7, 1938, after the employees had been notified of the recommendation made by the trial examiner on March 9, 1938, that the Employees' Representative Committee be disestablished, a referendum with reference to the continuance of the plan was held. 3,455 workers voted to continue the plan, 562 voted to discontinue the plan, and 51 ballots were void.

On June 14, 1938, the annual election was held, 4,233 out of 4,889 men present at work elected 43 representatives to serve from July 1, 1938, to June 30, 1932. 42 votes were thrown out.

The uncontradicted evidence also showed that there had never been any action on the part of the management or by any officers or persons in a supervisory capacity in the Shipyard, to discourage membership in any union or to encourage membership in any union.

And that for more than forty-three years prior to the hearing there has been no labor dispute or disturbance that has interfered with the operation of the yard.

### THE BOARD'S CONTENTION.

The National Labor Relations Board contends: One, because the plan of representation of employees was discussed with the employer before it was put into effect back in 1927, when it was not unlawful to do this, it is a company sponsored organization from its inception and cannot be corrected or amended to make it qualify under the National Labor Relations Act. And two, that by reason of Articles VI and IX of the plan of representation of employees, the organization is still objectionable. Even though these objectionable articles have since been eliminated.

For these reasons the Board contends that the affirmative action calling for disestablishment of the Employees' Representative Committee ordered by the Board should not have been stricken out by the Circuit Court of Appeals.



## ARGUMENT.

The language of the Court below best states the position of the Employees' Representative Committee when it said, "The purpose of the Act will not be served by destroying an organization that is without doubt the chosen representative of the great majority of the employees, even though it may be thought that their decision to restrict their spokesman to American-born fellow workmen is unwise".\*

The Court stated further: "But it was also important to take cognizance of the undoubted service that the organization had previously rendered to men and management alike, and of the insistence of the men upon the preservation of their organization, and to vote their sincere desire to eliminate in form as well as in substance every opportunity of the employer to a future share in the administration. That has now been accomplished and there is no longer any basis for the conclusion that the present plan is incapable of serving as a sincere representative of the employees for the purpose of collective bargaining."

"The National Labor Relations Act was designed to deal with the actualities of industrial life in this country, and to promote peace in relations between employer and employees by securing to employees the right, too frequently denied in the past, to organize and bargain collectively, with complete freedom and independence, through representatives of their own choosing." It is not questioned but that the employees have had a free hand in the selection of their representatives.

If they want to elect as their representatives only fellow employees they have a perfect right to do this, and if they want to change their by-laws and rules to elect

\*The plan has been amended so that the requirement that a representative be an American born citizen has been eliminated by striking from Section 1, Article 3 of the plan, "and who is an American-born citizen."

as their representatives outside persons they can easily do this by a change in the by-laws of their organization without protest or interference of any kind from the employer.

While the National Labor Relations Board contended that Article VI and Article IX of the plan restricted the independence of the Committee in its capacity as a representative of the men, it was thoroughly understood by the Shipbuilding Company and the Employees' Representative Committee that the provisions of Article VI and Article IX were to apply to matters pertaining to the rights of the Company under the plan, and in nowise applied or were intended to effect the independence of the Committee.

Because the National Labor Relations Board contended that while this might be so as to past actions something different might be tried in the future, Articles VI and IX were amended by the Employees' Representative Committee to overcome the objection.

We have then an employees' representative committee that has been fairly elected without interference or molestation by the employer, by an overwhelming majority of the employees, to represent them as a collective bargaining agency in negotiations with the employer.

The question then arises, whether this Organization should be disestablished because of some insignificant assistance given it by the employer, such as the distribution of copies of the minutes through the company's mailing system, and permitting copies of the minutes to be typed on the company time?

It is submitted that the cease and desist order eliminates this inconsequential aid that has been given. To cause the disestablishment of this Organization is unreasonable and would defeat the very purpose of the Act.

The Board takes the position that where it has found that an employer has dominated and interfered with the administration of a labor organization of its

employees that it has sole and unlimited discretion as to what affirmative relief it shall order.

In *National Labor Relations Board v. Fansteel Metallurgical Corp.*, No. 436, the Court said: "The authority to require affirmative action to 'effectuate the policies' of the Act is broad but is not unlimited. It has the essential limitations which inhere in the very policies of the Act which the Board invokes".

In *Consolidated Edison Co. v. National Labor Relations Board*, Nos. 19, 25, we find: "The employers' practices, which were complained of, could be stopped without imperiling the interests of those who for all that appears had exercised freely their right of choice".

In *National Labor Relations Board v. Pacific Grayhound Lines, Inc., et als.*, 303 U. S. 261, 270, we find: "We may assume that there are situations in which the Board would not be warranted in concluding that there was any occasion for withdrawal of employer recognition of an existing union before an election by employees under section 9 (c), 29 U. S. C. A. 159 (c), even though it had ordered the employer to cease unfair labor practices".

It is clear from these cases that this court recognizes that the National Labor Relations Board does not have unlimited authority in ordering affirmative relief.

No election was called for by the National Labor Relations Board to determine whether the majority of the employees desired the Employees' Representative Committee to continue to be their bargaining agency, although the Employees' Representative Committee themselves called for a referendum, after the report of the Trial Examiner of the National Labor Relations Board had been published. The result of that referendum was a vote of 3,455 for with 562 against a continuation of the Plan.

It is not contended that there is another labor organization or that there are other employees' represen-

tatives to look after the interest of the men. To dis-establish this Employees' Representative Committee, overwhelmingly elected by the employees of the Newport News Shipbuilding and Dry Dock Company, leaves them without a collective bargaining agency.

It might be that they could join up with some national labor organization, or they might go on without representatives. But it is not the purpose of the Act to force the employees into any particular kind of a labor organization, nor is it the purpose of the act to deprive them of their honestly, freely chosen representatives.

In conclusion it is submitted that the facts in this case are peculiar to this particular case and that the review of this case will not aid the Board in the disposition of other cases. The action to be taken by the Board in each case is dependent upon the facts in that particular case.

### CONCLUSION.

It is respectfully submitted that the petition for a writ of *certiorari* to review the judgment of the Circuit Court of Appeals for the Fourth Circuit should be denied.

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Attorney for the Employees  
Representative Committee.

PERCY CARMEL,  
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of Counsel.





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OCT 30 1939

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IN THE

**Supreme Court of the United States**

OCTOBER TERM 1939

**No. 20**

**NATIONAL LABOR RELATIONS BOARD,**

*Petitioner,*

*v.*

**NEWPORT NEWS SHIPBUILDING & DRY  
DOCK COMPANY, a Corporation,**

*Respondent.*

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIR-  
CUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.**

**RESPONDENT'S BRIEF**

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*Respondent.*

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIR-  
CUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

---

**RESPONDENT'S BRIEF**

---

The National Labor Relations Board, and The National Labor Relations Act (Act of July 5, 1935, C. 372, 49 Stat. 449) respectively will usually be referred to herein as the Board and the Act.

The Employees' Representative Committee will, in general, be referred to as the Committee, sometimes as the Intervener, sometimes as Plan of Representation of Employees, sometimes as the Plan; and Newport News Shipbuilding and Dry Dock Company, as the Respondent or the Company.

## FOREWORD

With great reluctance, but impelled by a sense of duty, we bring to the attention of the Court at the threshold of this discussion, the character of the brief filed on behalf of the Board. In its brief, as will appear from what follows, the Board ignores the facts shown by a stipulation to which it was a party made at the time of the hearing; and seeks, by repudiation of its own supplemental certificate, to deprive this Court of the benefit of facts which the Board certified to the Circuit Court of Appeals as a part of the record in this case, and as such, were considered by that Court.

We specify:

The brief does not even mention the stipulation *to which the Board is a party*. This stipulation shows facts of the utmost materiality and importance in any phase of the case that has to do with the conduct of the Company and the legality or illegality of the Plan of Employee Representation now before the Court.

The stipulation (R. 75-78) is in part (*italics ours*) that:

"For the purpose of expediting the hearing, it is stipulated and agreed between counsel for all the parties hereto . . . that the following is the evidence which will be submitted *without contradiction* for the intervenor . . . from which the Trial Examiner, the . . . Board or any Court may determine the questions in issue:

"2. That from 1927 to the present the employees selected their representatives from the various districts by nominations and elections participated in only by employees below the rank of leading man and that none of the em-



ployees that participated in the election occupied any supervisory position.

"3. That the shipyard did not interfere with, select, discourage, encourage or in any way prevent the selection of representatives by the employees of representatives of their own choosing."

Also that nominations and elections of representatives are "conducted exclusively by the employees in accordance with regulations prescribed by the Executive Committee of the Employees Representative Committee" that nominations and elections are by secret ballot and "so conducted as to avoid undue influence or interference with the voters in any manner whatsoever, and to insure fairness in the counting of ballots (para. 8) ; and that "the ballots and all expenses of conducting the election has been borne by the Employees Representative Committee since July 5, 1935" (para. 9).

These are among the facts stated by the court below to be "proved by uncontradicted evidence or by stipulation". The Board's entire case rests upon a negation of these facts. Its argument consists of a fiery arraignment and denunciation of respondent and the Committee for having supposedly done and permitted the things which the Board stipulated the evidence "submitted without contradiction" would show had not been done.

2. The brief, p. 51, attempts to repudiate the Board's own certificate made to the Circuit Court of Appeals for the purpose of completing the record. (See "Supplemental Certificate of National Labor Relations Board" R. p. 215).

That the Board considered the data there referred to is shown by the fact that it held it immaterial (Decision R. 193-4). These facts were certified as "a part of the record" and as such considered by the court below.

No objection was made by the Board or its counsel to their consideration by the Circuit Court of Appeals. It comes with poor grace that this Board, so powerful in the scope and methods of its control over the business and industry of the nation, should, at this late day and in this Court, attempt, on technical grounds, to repudiate its own official act.

3. The brief is replete with arguments founded upon assumed, but non-existent, facts. It is reckless in its statements of purported fact. Some of its more glaring errors in that respect are referred to in the statement, some in the argument herein.

4. The brief is remarkable for its vindictiveness of spirit, no less than for recklessness of statement. Bitter denunciation takes the place of a calm review of the facts shown by the record. A barrage of adjectives and adverbs tends to conceal the fact that the Court is here dealing with a perfectly tranquil situation—with a plant where industrial peace in the real sense, that of normal and friendly relations between employer and employees, has prevailed during the life of the Company.

A few examples from the brief. All italics ours.

The legality of the Plan at the time of its adoption may be admitted "without in any way affecting the

undeniable fact that . . . it was simply a creature shackled to respondent," etc. p. 22.

"Collective bargaining free from employer domination and interference was *plainly impossible*". p. 22.

"The Plan as *initiated* by respondent and its employees in 1927 consisted of a labor organization which was *completely* respondent's creature" p. 21.

\* \* \* "respondent's *domination, interference* and *support* continuing in *open defiance* of the Act." p. 23.

\* \* \* "respondent's *thorough domination, support, and interference* with the Plan." p. 40.

"Moreover, the plan's history of management participation and support has *inevitably* shaped the attitude of the employees toward it as a plan tied up *inextricably* with respondent's interests." p. 34.

"Respondent's *efforts to suppress all freedom of choice*." p. 40.

All these and many other lurid expressions are used of an organization which the Board stipulated would be shown by evidence submitted "without contradiction" to be one in which the employees have always selected representatives of their own choosing free from employer domination or interference. See Stipulation R 75, particularly paragraphs 2, 3, 8, 9 and 13.

### QUESTION INVOLVED

We cannot agree that the question presented in this case is that stated by counsel on page 21 of their brief. That that question arises here we deny. On the contrary, the Circuit Court of Appeals expressly recog-

nized that upon such a finding, if supported by substantial evidence, the Board has authority to require the employer to withdraw all recognition from the organization as the representative of his employees.

Thus, the court said (Opinion R. 227):

"When the Board finds that an employer has created and fostered a labor organization of its employees, and has dominated its administration, in violation of Section 8 of the National Labor Relations Act, and the finding is supported by substantial evidence, the Board has authority under section 10 (c) of the Act to require him to withdraw all recognition to the organization as the representative of his employees. This rule was established in *Labor Board v. Greyhound Lines*, 303 U. S. 261, and *Labor Board v. Pacific Lines*, 303 U. S. 272, and has been followed and applied by this court. \* \* \* (Citing cases).

The Circuit Court of Appeals was careful to point out that it has uniformly followed and applied the rule laid down by this Court in the two Greyhound Lines cases, *supra*.

What the court below did do was to disapprove the ultimate finding of the Board to the effect that the Employees' Representative Committee is incapable of serving the employees as their genuine representative for the purpose of collective bargaining. The court held that the inference that the Employees' Representative Committee is "still the creature of the Company", to use the language of the Board, cannot reasonably be drawn; that "there is no reasonable ground upon which the disestablishment of the organization of the men can

be sustained"; and that the "purpose of the act will not be served by destroying an organization that is without doubt the chosen representative of the majority of the employees." (Opinion, R. 230).

The real question involved here is somewhat broader than that raised by petitioner's specifications of error, brief p. 13.

It is, whether the Circuit Court of Appeals, erred in holding that "when all of the circumstances of the case are considered, including not only the findings in the Board's opinion, but also the additional undisputed facts above set out (in the opinion), the inference that the Employees' Representative Committee 'is still the creature of the Company', to use the language of the Board," cannot be reasonably drawn, and that "there is no reasonable ground upon which the disestablishment of the organization of the men can be sustained."

If there was no error in this holding, then there was no error in the refusal of the court to enforce paragraph 2 (a) of the Board's order, or in setting the same aside.

### STATEMENT

As already remarked, the statement contained in the Board's brief is in many respects erroneous, and incomplete. This necessitates a statement here, which largely accounts for the regrettable length of this brief.

*First:* This is not the case of a "company union" whose formation was initiated by the employer in order to combat the efforts of an "outside" union to organize the company's employees. *Balliston-Stillwater, etc. Co. v. National Labor Relations Board* (2nd Cir.) 98 Fed.



(2) 758; 761. Contrary to the Board's contention, the company did not "initiate" the plan, and the Board points to no evidence that it did. There is no such evidence to point to. The most that may fairly be inferred from the evidence is that respondent was sympathetic, and cooperated with its employees in putting the plan into effect.

Nor is there any similarity between this case and the cases cited on behalf of the Board, namely, the two Greyhound Lines cases, *supra*, and National Labor Relations Board v. Fansteel Metallurgical Co., 306 U. S. 240. In each of these cases the employer was violently anti-union. In some of them employees were coerced into joining company unions with threats of discharge in case the employees joined another union; in some the company instigated the formation of a union in the midst of a bitter labor war in its plant.

*Second:* There has not been and there is not now any labor dispute between the company and the employees (Robeson, R. 75; Trenwith, R. 78-9; Fenton, R. 79; White, R. 80). The evidence clearly shows and the court below found that there had been no labor dispute for over 43 years prior to the hearing (Opinion of Court below R. 229). This period of time about covers the life of the company. In another phase of this matter, Newport News Shipbuilding and Dry Dock Company v. Bennett F. Shaufler et al, 303 U. S. 54 at page 91 of the record in that case, Judge Way of the District Court, who has resided in this vicinity for many years, said:

"I think that is a fact of which this Court might well take judicial notice, that during the many years which complainant<sup>1</sup> has been in business in this vicinity it has a record, so far at least as the public has known, remarkably clear of conflict between it and its employees."

*Third:* The proceedings in this case were not initiated by employees of the company. The employees have not asserted any grievance against the company. They are, through the Employees' Representative Committee, parties to these proceedings, protesting before this Court the validity of the Board's order requiring the disestablishment of their union.

These proceedings were initiated by a so-called National union, The Industrial Union of Marine and Shipbuilding Workers of America, an affiliate of the C. I. O. with headquarters at Camden, New Jersey (Van Gelder, R. 11).

### THE COMPLAINT

The principal charge of the complaint was that respondent, on various dates between March 3, 1937 and June 7, 1937, had discharged and refused to reinstate seven individuals therein named because they had joined the above mentioned union and were active in its behalf. The Trial Examiner, James C. Paradise, dismissed the complaint as to three of the men but sustained it as to the remaining four. (R. 186). On exception to the intermediate report of the Trial Examiner, the Board disapproved his findings and conclusions in this latter respect, sustained respondent's

<sup>1</sup> Respondent here.

contention that these four men had been laid off with numerous others<sup>2</sup> because of lack of work in the Shipyard, and without reference to the union activities, if any, of the individuals involved; and dismissed the complaint as to them. (R. 203).

The complaint further charged that respondent in 1927 had put into force and effect at its plant a plan known as "Representation of Employees", and that it had continuously fostered, encouraged and dominated the same and contributed financial and other support thereto. The Trial Examiner sustained this charge and made certain recommendations in respect thereto. (Intermediate Report, R. 185). The Board sustained the Trial Examiner in the main as respects the Plan of Representation, and issued its order, August 9, 1938 (R. 203), which, in addition to its negative requirements, ordered certain affirmative action, including the requirement that respondent withdraw all recognition from the organization known as "Representation of Employees" and completely disestablish the same (Paragraph 2(a) R. 203).

The Circuit Court of Appeals, for reasons fully set out in its opinion, disapproved and set aside the latter requirement.

It may be noted that although more than two years have elapsed since the hearing before the Trial Examiner, and more than one year since the date of the Board's order, the Plan has been functioning to the satisfaction of the employees, whose relations with respondent, as always, have continued cordial and friend-

<sup>2</sup>—The Board in its decision (R. 201) correctly refers to this as "A general layoff".

ly, and that there has been at respondent's plant no labor trouble of any kind. Industrial peace has prevailed. In this connection it should be emphasized that neither in the complaint, in the testimony before the Trial Examiner, or otherwise, has it been charged, or even suggested, that the employees have been in any way imposed upon. In other words, there has been and is no claim on the part of anyone, notwithstanding the Board's theoretical claim of possible dangers, that the Plan has operated, *in fact*, to stifle the independence of respondent's employees, or been in any way used to their disadvantage. On the contrary, as the testimony shows and the court below held, it has worked to their benefit.

The great majority of respondent's employees are natives of Virginia and North Carolina. Of the total number, at the time of the hearing, 4131 were born in Virginia, 925 in North Carolina, 1099 in other States and 282 in foreign countries. (Respondent's Exhibit 9, R. 170).

Respondent's business is that of designing and building ships, in the main vessels for the United States Navy. It is a matter of general knowledge that this is a highly technical business, requiring highly intelligent, skilled labor. It is not likely that men of this stock and character would submit to domination or interference in their affairs by the employer. Had the respondent at any time attempted to stifle their independence of thought or action, they would have asserted themselves. The fact that the employees have not done any such thing but, on the contrary, have contested these proceedings from their inception, is evidence of the fact that

the Board's fears are groundless, and its conclusion, without merit.

Respondent has never been anti-union. For years, many of its employees have belonged to the American Federation of Labor. Some of its departments are completely unionized (Tighe, R. 142). The employment of its men and the tenure of their jobs, has never been influenced by the question whether they or any of them held union cards. Robeson, R. 68, Rhinesmith, R. 54, Beazlie, R. 56, Tighe, R. 144, Blanton, R. 48-49 (the last named being the Board's witness). This testimony is nowhere contradicted.

The court below said:

"There has been no action on the part of the management or by any officers or persons in a supervisory capacity in the Shipyard to discourage membership in any union." (Opinion R. 229).

*Fourth:* At the hearing and again in its exceptions and brief before the Board, respondent objected to all evidence regarding any of the various plans of employee representation in existence prior to the Act of 1935. The ground of the objection was that the plan in existence at the time of the hearing was essentially different from any of the preceding plans, and that evidence of prior plans encumbered the record to no good purpose, and confused the true issue. The Trial Examiner overruled these objections and, apparently, the Board sustained the ruling. The Court did not pass on the point so raised. As the Board again deals at great length with the various plans existing before the pass-



age of the Act in 1935, it would seem necessary for us to reply, but in so doing we do not waive our objections, heretofore made. On the contrary, we respectfully insist that the objections were well taken and should have been sustained. The 1937 plan is in truth the real issue before the Court.

#### THE ORIGINAL PLAN OF EMPLOYEE REPRESENTATION ADOPTED 1927.

In the year 1927 respondent's employees in an election held for the purpose voted to form the organization sometimes referred to in the record as "Plan of Employee Representation". No employee who occupied a supervisory position voted in the election (Stipulation, para. 1 and 2, R. 75). There is not even a suggestion in the evidence to support the complaint that in 1927, more than 12 years ago, respondent caused to be put into effect this plan of employee representation. The record does not show who initiated the Plan. The most that may be inferred from the evidence is that the Respondent was in sympathy with the purpose of the Plan, and cooperated in putting it into effect.

The preamble of the plan adopted in 1927 reads:

"In order to give the employees of the Company a voice in regard to the conditions under which they labor, and to provide an orderly and expeditious procedure for the prevention and adjustment of any future differences, and to anticipate the problem of continuous employment, a method of representation of employees is to be established" (Board's Exhibit 4, R. 160).

The independence of the representatives was guaranteed by the following clause eleven:

GUARANTEEING THE INDEPENDENCE  
OF REPRESENTATIVES

It is understood and agreed that each Representative shall be free to discharge his duties in an independent manner without fear that his individual relations with the Company may be affected in the least degree by any action taken by him in good faith in his representative capacity.

To insure to each representative his right to such independent action, he shall have the right to take the question of an alleged personal discrimination against him, on account of his acts in his representative capacity, to any of the Superior Officers, to the Joint Committee and to the President of the Company. (R. 165).

A similar clause in substantially the same language, or to the same effect, is contained in each revision of the plan (1931 Plan, Art. IX, R. 157; 1937 Plan, Art. VIII, R. 152).

This plan was set up for the purposes of collective bargaining and functions for that purpose. (Board's witness, Blanton, R. 39).

It was not alleged in the complaint nor claimed in the course of the hearing that respondent foisted this plan upon its employees; nor is it accurate to imply, as does the Board, that respondent was the actor in putting plan into effect. Respondent by its answer to the complaint averred that in cooperation with its employees in 1927 it *aided* in putting into effect at its ship-

yard a plan of employee representation. (R. 6). The plan was voted on by the employees and adopted by an overwhelming majority; 2,430 voting for the plan, 204 against, and 8 votes were void. The employees then elected their representatives (Intervener's Ex. 2; R. 170-71) and the plan became effective as a bargaining agency.

It was certainly understood that respondent would recognize the organization for purposes of collective bargaining, and it has always done so. As an agency for that purpose, it has functioned well. Through it the employees have, from time to time, taken up with the Company questions relating to wages, hours and conditions of labor, and always secured satisfactory results. Wilkins, R. 92, 93, 101, 108-9; Travis, R. 127-129; Blanton, Board's witness, R. 39.

The Court below said that:

"The management of the Shipbuilding Company has always been willing to negotiate with the Committee in regard to any matter affecting wages, hours, or conditions of work, and the committee has been successful from time to time in securing changes in these respects beneficial to the men." (Opinion R. 229).

There was nothing illegal about this plan at the time of its adoption, nor at any time thereafter prior to the enactment of the National Labor Relations Act. It was designed to promote friendly relations between employer and employee, secure normal cooperation between them, and thus insure industrial peace. In the attainment of these desirable ends it has been notably successful.

*Fifth:* At the instance of the employees, the plan was revised in 1929, 1931, 1934 and 1936. But as none of these revisions effect the issues they will not be dealt with in detail. For example, it cannot be material to any issue in the case to consider, as do Counsel for the Board (brief 8-9 and 23), that when ~~the~~ company was short of work, the employee representatives agreed, at the suggestion of the company, that their compensation as representatives should be reduced from the \$100 theretofore paid them annually to \$60 per year, or that, thereafter when new construction contracts were obtained this reduction was restored, or that the Secretary of the General Joint Committee was paid \$5.00 per month by the Company. At that time this arrangement was not obnoxious to any law then in-existence, nor was it morally wrong. And the arrangement was open and known to all. There was nothing secret about it. But it is material to note that these payments ceased with the 1937 plan (R. 36). The Board's statement of the case does not mention this fact.

In the original plan, and in all of the revised plans, an employee, to be eligible to vote or to election as a representative, must be below the grade of leading man or supervisor. This requirement has always been observed. There has been no contention to the contrary.

#### THE EXISTING OR 1937 PLAN OF EMPLOYEE REPRESENTATION

In May 1937 after this Court had sustained the constitutionality of the Act, the employees on their own initiative changed the Plan. The change amounted to an adoption of a new plan. The purpose of this was to

make the plan conform both in letter and spirit to the Act. (Wilkins, R. 91). The Board's statement, brief p. 10, as to how the Plan originated, is wrong.

The facts are that Blanton, the Board's witness, drafted what he called a complete re-write of the book (R. 50). He took this to Robeson, the "Management Representative" appointed as such under the express provisions of the then existing plan (R. 43). Robeson thought he should call in Woodward, the Company's General Manager, that he, Robeson, "might go out on a limb" (R. 73). Robeson telephoned Woodward, who came down to Robeson's office (R. 51) and the three had an informal talk (R. 73) about Blanton's "re-write" of the plan (R. 50). Blanton's "re-write" still provided for company appointed representatives and that the company pay \$100 a year to the elected representatives. Woodward objected to company representatives on the committee and at his suggestion this provision was eliminated. The effect of this change, made at Woodward's suggestion, was to deny to the company any voice in the operation or functioning of the plan. Blanton's provision for payment to the elected representatives was subsequently eliminated by the elected representatives (Blanton, R. 36) when Blanton's plan was submitted to them, as now to be explained.

Following Blanton's conference with Robeson and Woodward he submitted his plan, as changed in that conference, to the Executive Committee (Blanton, R. 40, Board's Ex. 12, R. 158; Ex. 13, R. 159). That Committee referred the plan to the General Joint Committee, which in turn referred it to a separate meeting of the *elected* representatives (Blanton, R. 52, Board's



Ex. 12, R. 158). The elected representatives made some changes and as changed by them reported it back to the General Joint Committee with recommendation that it be adopted. (Board's Ex. 13, 159; Blanton, R. 52). The plan as changed by the elected representatives was unanimously approved and adopted by the General Joint Committee (Intervenor's Ex. 4, R. 171) "with no change" (Blanton, R. 53).

Notwithstanding the reckless statement in the Board's brief that Robeson and Woodward took an active part in the 1937 revision, and that they made "numerous changes" in the draft submitted by Blanton (brief p. 25), the fact is that the *only change* suggested by either of them was that suggested by Mr. Woodward that all provision for Company representation on the Committee be eliminated. This conference was sought by Blanton, not by the Company. (Blanton, R. 51; Robeson, R. 73).

*Sixth:* The employees desired the original plan; they desired each revision and they desire the existing 1937 plan.

*Seventh:* On June 7, 1938, after it became known that the Trial Examiner had recommended to the Board that the Company be required to withdraw recognition from and to disestablish the Plan as the bargaining representative with the Company, the employees held another referendum on whether they wished to continue or discontinue the plan. 4068 voted. Of that number 3455 voted to continue the plan, 562 voted to discontinue it and 51 ballots were void. (Supplemental Certificate of Board, R. 215).

*Eighth:* At the hearing before the Trial Examiner the Board, the Intervener and the Company stipulated (R. 75) that evidence introduced "without contradiction" would show in part, as follows:

2. That from 1927 to the present the employees selected their representatives from the various districts by nominations and elections participated in only by employees below the rank of leading man and that none of the employees that participated in the election occupied any supervisory position.

3. That the shipyard did not interfere with, select, discourage, encourage or in any way prevent the selection of representatives by the employees of representatives of their own choosing.

4. That the entire shipyard for the purpose of the nominations and election of the representatives was divided into geographical districts so as to give each craft and each group of workmen a representative.

8. \* \* \* \* \*

Nominations and elections of representatives are conducted exclusively by the employees and in accordance with the rules and regulations prescribed by the executive committee of the Employees Representative Committee, and as set forth in the plan, nominations and elections are by secret ballot and so conducted as to avoid undue influence or interference with voters in any manner whatsoever, and to assure fairness in the counting of ballots.

9. The ballots used in the election are printed and furnished by the employees and the election conducted by employees eligible to participate in the election and selected by the execu-

tive committee. The ballots and all expenses of conducting the election has been borne by the Employees Representative Committee since July 5, 1935, out of the funds contributed by the employees for expenses of the committee sent to Washington in 1929 and 1930.

The Board's brief does not even mention that there was such a stipulation.

*Ninth:* The Board in its brief, in utter disregard of the facts shown in the record by stipulation and by the testimony of numerous witnesses, asserts that respondent attempted to prevent the selection by the employees of representatives of their own choosing. It speaks, brief, p. 40 of

"Respondent's efforts to suppress all freedom of choice."

The utter absurdity of this assertion is shown by the stipulation, para. 2, 3 and 13, R. 75 and 76, and by the uncontradicted testimony of Rhinesmith (R. 54), Beazlie (R. 56), Evans (R. 57), Rudder (R. 64), Boyd (R. 138), Carter (141) and Tighe (R. 144), and others.

For example, Robeson testified (R. 72) as follows:

By MR. KEARNEY

Q. During the time that this plan has been (in) operation—and the evidence here is that it has been in operation since 1927—are you aware of any activity or effort on the part of the management of the shipyard, or any of the officials, with regard to who might be selected or who should not be selected to represent the employees?

A. No, sir. The effort has been otherwise, if I might say so—to safeguard it.

Q. By that do you mean the effort has been to leave the selection of the representatives of the employees entirely up to the men?

A. Yes, sir.

Q. Without any interference?

A. Yes.

Q. Or domination on the part of the company or any of its officials?

A. Yes, sir.

When Solomon Travis was on the stand the following occurred, as appears at page 130 of the record:

By MR. KEARNEY:

Q. Do you know of any instance in which the shipyard encouraged or discouraged the election of any particular man—

MR. BLUM: That is objected to.

By MR. KEARNEY:

Q. For representative?

A. Never since I have been in the yard.

MR. KEARNEY: Just a minute. There is an objection.

“TRIAL EXAMINER PARADISE: What is the objection? (question?)

“MR. KEARNEY: Do you know of any instance in which the shipyard discouraged or encouraged, and by ‘shipyard’ I meant any man in a supervisory capacity, the election of any man as a representative of the employees?

"TRIAL EXAMINER PARADISE: I do not think there is any testimony in the case that they did, except possibly in the case of Mr. Blanton.

"MR. KEARNEY: I understood that, but am I confined in rebuttal to just what they have here, or can not I go ahead with positive proof?

"TRIAL EXAMINER PARADISE: *There is no basis for any finding by the Board that they did.* I do not see that it would add anything for you to prove that they did (not?). The objection is sustained" (Italics supplied).

This was after the Board had closed its case (R. 54). Neither before nor after it closed, was there any evidence that Respondent had ever interfered with the Employees' freedom of choice. On the contrary, there was, in addition to the stipulation, abundant evidence that it had not. The court below was clearly right when it rejected the conclusion of the Board and said (Opinion, R. 228):

"During the whole life of the plan from 1927 until the time of the hearing before the trial examiner in August and September 1937, the company has not interfered with, discouraged, encouraged or in any way prevented the selection by the employees of representatives of their own choosing."

Tenth: Witness William H. Bell.

This was a thoroughly discredited witness. He testified for the Board and the Board itself refused to credit his testimony. Why counsel for the Board required that any part of the testimony of this witness be included in the printed record we cannot understand.



They have made no reference to this testimony in their brief. Lest they have in mind to make use of it in their reply to Respondent's brief, we think it advisable to show here that Bell, as a witness, was thoroughly untrustworthy.

He had been "laid off" in June 1937 with several others and was called as a witness by the Board for the purpose of proving that these discharges were discriminatory. Bell testified, with a wealth of detail, of a telephone conversation which he claimed he overheard while waiting in the office of the employment manager of the DuPont Plant at Amthill, near Richmond, on June 29, 1937. Of this testimony the Board said in its decision (R. 201):

"One matter remains for disposition. The Trial Examiner, in reaching the conclusion that Bell, Anderson, Wright, and Dillon were discriminatorily discharged, relied upon certain testimony of Bell regarding a telephone conversation allegedly overheard by him while waiting for an interview in the office of the employment manager of the DuPont plant at Amthill on June 29. On that day, Wright, Anderson, and Dillon were working at the Amthill plant. Bell's testimony, in substance, is that the employment manager, in Bell's presence, received a telephone call from the respondent's yard in the course of which the person initiating the call characterized Wright, Anderson, and Dillon as 'agitators'. The respondent's witnesses denied making the call, and the acting manager of the local telephone exchange at Newport News testified that the records of the telephone company fail to show that such a call was made. Upon the entire record we are unable to find

that the respondent did, in fact, make the telephone call in question.

A perusal of Bell's testimony will show that in other particulars he contradicted himself. But aside from further discrediting a witness already shown to be unworthy of belief these instances are not material here.

#### PROCEEDINGS BEFORE THE BOARD

The action of the Board and the question which arises on this writ have been indicated in the foregoing statement of facts. It should here be noted that at the time of the hearing before the Trial Examiner, the Employees Representative Committee, by leave of the Board, intervened in the proceedings by motion which included an answer (R. 7) denying that it is company-dominated; and that it actively participated throughout the hearing.

As respects the Employees Representative Committee, the Board made certain alleged findings of fact, and conclusions of law (R. 192). Many of its supposed findings of fact are mere argumentative statements without support in the evidence. Thus (R. 197):

"Manifestly, from the plan's inception in 1927 until its final revision in 1937, the respondent dominated, assisted, and interfered with the administration of the labor organization whose structure is set forth in the plan, in its revised as well as in its original form."

At page 10 of the Board's brief, Counsel state this as a definite finding by the Board, without disclosing

its argumentative character. They ignore the use of the word "manifestly" with which it begins.

This follows an analysis of the plan prior to 1937, and is based solely upon that analysis.

The Board made *inter alia* the following ultimate finding:

"We find that the respondent has dominated and interfered with the formation and administration of the Employees' Representative Committee of the Newport News Shipbuilding and Dry Dock Company, sometimes called Representation of Employees, and has contributed support to it, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act. We find, further, that the Committee is incapable of serving the respondent's employees as their genuine representative for the purposes of collective bargaining."

An examination of the Board's findings upon which this ultimate conclusion was based will show that they are without support in the evidence. That respondent did not dominate or interfere with the administration of the Committee at any time throughout the life of the organization is shown by the stipulation agreed to by the Board (Stipulation paragraphs 2, 3, 8, 9 and 13, R. 75). That respondent contributed to the support of the Committee when it was lawful to do so, is admitted. This contribution was in the form of nominal compensation to elected representatives for their services. But when the constitutionality of the National Labor Relations Act was upheld, the plan was amended by the employees, and all provision for compensation was

eliminated, and ceased when the 1937 plan became effective. There is no evidence in the record of any other contribution except the fact that the booklet containing the 1937 plan was printed at Company expense (Stipulation par. 10, R. 77); and that prior to the hearing the Secretary caused the minutes of the Committee meetings to be copied (mimeographed) on a mimeograph at the correspondence office of the Company and copies sent to employee representatives through the yard messenger service in envelopes used in that service.

These envelopes and the yard messenger or mailing system are available for the free use of any employee for private and personal use (Blanton, R. 43; Wilkins, R. 89, 40, 104-5, 110, 111).

There is no evidence that the company knew the Secretary was having his minutes copied in the Company's correspondence office (R. 74) or that he was using the yard messenger system as a means of distributing them to the Committee representatives. Wilkins testified that he obtained the envelopes which he used from wastepaper baskets where they are allowed "to accumulate until they serve the purpose." They had not been thrown away. "They were to be used by anyone who came along and wanted an envelope" (R. 105).

Even had the Company known of these things which Wilkins frankly admitted he did in behalf of the Committee, it is hardly likely the company would have objected any more than it would have objected to any other employee doing the same things. As we have stated, the record shows beyond doubt that any employee could have done any of these or similar things.

But there was no wilful violation of the Act in any of these things. Respondent did not at that time believe the Act applied to it, or that the Board had any jurisdiction over it. It was engaged solely in production. Decisions of this Court had uniformly held that production, in itself, was not commerce.

That the Board attached undue importance to these trivial matters is obvious.

The Trial Examiner made his intermediate report as of March 9, 1938 (R. 177-186). After his recommendations that respondent be required to withdraw all recognition from the Committee and to completely disestablish the same, had become known among the employees, they held a *referendum*, June 7, 1938, for the purpose of ascertaining the sentiments of the employees with respect to continuing the Committee as their bargaining agency, or disbanding the same. An overwhelming majority of the employees voted to continue the Committee (Supplemental Certificate of the National Labor Relations Board, R. 215-219). The results of this referendum were brought to the attention of the Board by Counsel for the intervener, prior to the decision of the Board, with the request that it be made a part of the record<sup>3</sup>. The Board declined this request on the ground that it was improperly made under its rules and that the data sought to be made a part of the record was immaterial to the determination of the issues (R. 193).

Thus the Board held that the wishes of the employees were not to be taken into account, and that it

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3—Counsel for the Board erroneously state that this data was brought to the attention of the Board by counsel for the respondent.



was immaterial what organization they had chosen to represent them. In so doing the Board denied to the employees "the right to self organization" guaranteed by section 7 of the Act.

After respondent had filed its petition for review with the Circuit Court of Appeals, and the Board had filed in that court what purported to be a complete transcript of the record, the Board under circumstances hereinafter stated p. 36, voluntarily certified the said data as "a part of the record in the above entitled matter, previously certified to this Court under date of September 6, 1938" (Supplemental Certificate, 215). By making this Certificate the Board waived compliance with its rules.

The data shown by this supplemental certificate was a part of the record on which the case was heard by the Circuit Court of Appeals. It was the right any duty of that Court to consider it. Now in its brief, the Board, for the first time, tries to repudiate its certificate. This the Board cannot do, post p. 77. *Newcomb v. Wood*, 97 U. S. 581.

#### PROCEEDINGS IN THE COURT BELOW.

The Circuit Court of Appeals fully recognized the rule established by this Court in the two Greyhound Lines cases, *supra*, and was careful to point out that it has uniformly followed and applied this rule, citing a number of its own decisions in which this had been done. But it said (R. 228):

"In setting out the factual basis for the application of this rule of law in the pending case,

the Board made no mention of certain facts that were proved either by uncontradicted evidence or by stipulation of counsel. The omission doubtless occurred because in the opinion of the Board the facts referred to were immaterial to the issue; but, in our view, they must be taken into consideration since they bear directly upon the inquiry whether or not the Employees' Representative Committee is capable of representing the employees in collective bargaining, free from domination or interference by the employer."

The facts shown by uncontradicted testimony and by stipulation thus ignored by the Board are set out at length in the majority opinion (R. 228-230). They are also set out in this brief, post pp. 40, 41, 42.

The Court differed from the Board in some respects in its interpretation of the Plan, particularly sections VI and IX of the 1937 revision. It did not confine itself to the written plan as a source of facts. On the contrary it looked to the whole record and considered facts shown by uncontradicted testimony and by stipulation. The Court below had, in the decisions of this Court, ample precedent for so doing.

*International Shoe Co. v. Federal Trade Commission*, 280 U. S. 291, 297.

*Federal Trade Commission v. Curtis Publishing Company*, 260 U. S. 568.

In taking into account "uncontradicted evidence" which the Board discarded the Court below did no more than was done by the Circuit Court of Appeals for the Sixth Circuit in *National Labor Relations Board v. Sands Manufacturing Company*, 96 Fed (2)

721; and no more than was approved by this Court when it affirmed that decision 306 U. S. ~~332~~ 83 L. Ed. 488.

This important decision is not so much as mentioned in the Board's brief in this case.

The court below sustained the negative portions of the Board's order; but, for reasons fully set out in the majority opinion, disapproved and set aside so much of the affirmative portion as required the respondent to withdraw all recognition from the Employees' Representative Committee and to completely *disestablish* the same. The true issue here is thus presented by the action of the court below in disapproving and setting aside that portion of the Board's order<sup>1</sup>.

### SUMMARY OF ARGUMENT

1. The Board cannot be permitted to disregard its own stipulation or repudiate, as it attempts to do, its certificate made to the Circuit Court of Appeals for the purpose of completing the record.

There is no substantial evidence in the record to sustain the findings of the Board with respect to the Employees Representative Committee. Those findings were based chiefly upon the Board's analysis and interpretation of the Plan of Employee representation itself. The Board's inferences derived from a study of the plan are not facts, and are not binding upon the Circuit Court of Appeals, or upon this Court.

2. The failure of the Board to consider the uncontradicted evidence referred to by the Court below, was

<sup>1</sup> Respondent promptly posted the order required by the Circuit Court of Appeals in accordance with the requirements of its decree, and notified the Board of that fact, as directed by the decree.

arbitrary and unreasonable. By "failing to mention" facts proved by uncontradicted evidence, the Board could not exclude those facts and the uncontradicted evidence by which they were established, from consideration by the Circuit Court of Appeals upon review of the Board's findings and order.

3. The National Labor Relations Act, Section 10 (c) confers upon the reviewing court power.

"to make and enter upon the pleadings, testimony and proceedings set forth in such transcript a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Board."

This language, adopted from the Federal Trade Commission Act (U. S. C. Title 15, Section 45) has been construed by this Court to mean that the reviewing court has the power to examine the whole record, and ascertain for itself the issues presented and whether there are material facts not reported by the administrative body.

*Federal Trade Commission v. Curtis Publishing Company*, 260 U. S. 568, 579.

*International Shoe Company v. Federal Trade Commission*, 280 U. S. 291, 297.

Congress, in providing for review of the findings and orders of the National Labor Relations Board, used, so far as material here, the identical language which it had employed in providing for review of the findings and orders of the Federal Trade Commission. It must be presumed to have done so with full knowledge of the construction placed upon that language by

this Court in the cases above cited; and to have intended that the same construction should be given to it in Labor Board cases.

Where the National Labor Relations Board has disregarded "uncontradicted evidence" the Circuit Court of Appeals may consider that evidence in connection with the Board's findings, and reach its own conclusions.

*National Labor Relations Board v. Sands Manufacturing Company*, 96 Fed. (2) 721, affirmed 306 U. S. 586, 33-2

The power of review conferred by the National Labor Relations Act upon the Circuit Court of Appeals is broader than the statutory power of that Court to review orders of the Board of Tax Appeals. But even in tax cases the ultimate finding of the Board of Tax Appeals is a question of law, or at least a mixed question of law and fact. It is subject to judicial review, and on such review, the court may substitute its judgment for that of the Board.

*Helvering v. Tex-Penn Oil Co.*, 300 U. S. 481, 491.

The finding of the Labor Board in the instant case to the effect that the Employees Representative Committee was company-dominated, and incapable of serving the employees as an independent bargaining agency, is an ultimate finding which is subject to judicial review.

4, 5 and 6. The Court below correctly held that this finding was not supported by evidence. It correctly held that when all the circumstances of the case are considered, including not only the findings in the



Board's opinion, but the additional "undisputed facts" set out in the opinion of the court, but not mentioned by the Board, the inference that the Employees' Representative Committee is still the creature of the company cannot reasonably be drawn; and that there is no reasonable ground upon which the disestablishment of the organization desired by the men can be sustained.

7. From the fact that the court below enforced the negative portions of the Board's order it cannot, in the circumstances, be justly inferred that the court held respondent guilty of violating the Act. It is apparent the Court meant only to bar the resumption of acts admittedly done when they were lawful, but which ceased when they became unlawful.

8. There is no error in the decree of which the Board can complain.


## ARGUMENT

### I.

#### THE BOARD CANNOT BE PERMITTED TO REPUDIATE ITS OWN STIPULATIONS AND CERTIFICATES

The main thesis of the Board's brief is that respondent has dominated the Employees' Representative Committee, and interfered with the selection by the employees of representatives of their own choosing. This, of course, is not surprising, since its whole case rests upon that theory. What is surprising is that any Governmental agency should attempt, in this Court, to repudiate its own stipulations and certificates.

# MICRO CARD

TRADE MARK 

# 22

# 39



# 1054

# 65



## THE STIPULATION

The Board says, brief p. 43, that despite the Court's statement to the contrary the evidence was in many respects not "uncontradicted" and continues thus:

"The court was in error, for example, in stating (R. 228) that respondent, during the life of the Plan had not in any way interfered with the selection by the employees of representatives of their own choosing. That was precisely the basic question at issue, and the court's statement is contrary to the conclusion of the Board and all the evidence upon which it was based."

We agree that "this was precisely the basic question at issue". But the point is that the Board decided it contrary to the evidence, including its own stipulation. Its finding of domination and interference is contrary to that stipulation. (R. 75). Pertinent portions are found *ante* pp. 2, 3, 19, 20.

There is not a particle of evidence in the record to contradict this stipulation.

Continuing counsel say, Brief p. 43:

"Again, the statement by the court (R. 228) that all expenses of the elections under the Plan since 1937 have been borne by the employees is directly contrary to the undisputed evidence that respondent not only allows the elections to be held on its property, but also pays the clerks and judges of the elections for the time spent in such activity (R. 44, 46, 107)."

Here again they run counter to the Board's stipulation. Paragraph 9 of the stipulation reads:

"9. The ballots used in the election are printed and furnished by the employees and the election conducted by employees eligible to participate in the election and selected by the executive committee. *The ballots and all expenses of conducting the election* has been borne by the Employees Representative Committee since July 5, 1935, out of the funds contributed by the employees for expenses of the committee sent to Washington in 1929 and 1930" (R. 76). (Italics ours).

Elections have been held on Company property; but it is not true, as stated in the Board's brief that respondent pays the clerks and judges of election. Counsel's reference to the record on this point is to the testimony of Blanton, who, when asked (R. 46) who paid for the services of judges and clerks of elections in the election of June, 1937, replied that they were all salaried men, "and there isn't any question about the pay of salaried men." The plain inference is that no deduction was made from their stated salaries, nor were they paid extra.

Continuing counsel say, brief, p. 43:

"Finally, the statement of the court (R. 229) that respondent has not discouraged membership in any union is contradicted by all the evidence of support accorded to the Plan, with the consequent discouragement of other union activity."

This statement of the Court is fully supported by Section 13 of the Board's stipulation, and by the uncontradicted testimony of Robeson, R. 68; Rhinesmith,

R. 54; Beazlie, R. 56; Tighe, R. 144, and Blanton, R. 48-49, the last named being the Board's witness.

We respectfully submit that the Board is bound by the stipulation made at the hearing, and may not thus cast it aside.

*Cupples Co. Mfgs. v. National Labor Relations Board*, 106 Fed. (2) 100 at p. 118.

#### THE BOARD'S SUPPLEMENTAL CERTIFICATE

Counsel for the Board also attempt to repudiate its supplemental certificate (R. 215) filed with the Circuit Court of Appeals showing the results of a referendum held in June, 1938, and the extent of employee participation in elections held by the plan. After respondent had filed its petition for review with the Circuit Court of Appeals, and the Board had filed in that court what purported to be the transcript of the record, respondent was about to take legal steps to have this data made a part of the record. Thereupon the Board voluntarily certified the said data as "*a part of the record in the above entitled matter*, previously certified to this court under date of September 6, 1938" (Italics supplied).

At page 51 *et seq.* of their brief counsel for the Board erroneously state that the data thus certified by the Board as "a part of the record" was offered in a letter from *respondent's* counsel. Such is not the case as an inspection of the Board's supplemental certificate (R. 215) and the letter (R. 216) clearly show. The data was offered by Counsel for the intervener (Board's decision R. 193).



This data was certified to the court as "a part of the record." As such it was intended that the court should consider it. No objection to its doing so was made in that court by counsel then representing the Board. Now, however, the Board's counsel say in their brief, p. 52.

"We submit that the data should not have been considered by the court."

Counsel would thus repudiate a certificate solemnly made by the Board for the use of the court as "a part of the record," and relied upon by opposing counsel.

The Board cannot be permitted thus to play fast and loose with the courts and with the citizen. Having certified this data as "a part of the record," which the court was intended to consider, and did consider, it may not in this Court, and at this late day, make an objection which was not made in the court below.

As heretofore stated, the Board by making this certificate, waived compliance with its rules. When it failed to object to its use in the court below, it waived the point. *Newcomb v. Wood*, 97 U. S. 581. See p. 77 post.

We may add that the principal fact shown by this supplemental certificate, though highly important, was but one of the many "uncontested facts," set out in the opinion of the court below, and that the other uncontested facts fully support the action of the Court in refusing to enforce clause 2 (a) of the Board's order.

But in saying this we do not recede from the position taken above, or abate in the slightest degree our condemnation of this attempt on the part of the Board

to repudiate its own certificate, an act which is unfair not only to respondent and the intervener, but to the court below.

## II.

THE BOARD'S FAILURE TO CONSIDER THE UNCONTRADICTED EVIDENCE REFERRED TO BY THE COURT BELOW, AND TO GIVE IT APPROPRIATE EFFECT, WAS ARBITRARY AND UNREASONABLE.

In the exercise of its judicial function the Board may not cull out such parts of the evidence as tend to support a particular theory of the case; and discard uncontradicted evidence bearing upon the issue, but not comporting with that theory. It is required by the Act itself, Section 10 (c), to make its findings "upon all the testimony taken." This is but one of those fundamental requirements which are of the essence of due process in a proceeding of a judicial nature. *Morgan v. United States*, 304 U. S. 1-26.

"The National Labor Relations Board has wide discretion in administering the National Labor Relations Act, 29 U. S. C. A., para. 151 et seq., but in so doing it must deal fairly with all the parties. It has the duty to decide the case before it on all the evidence and should not arbitrarily cast away all the undisputed evidence that is inconsistent with its findings."

*Waterman Steamship Co. v. National Labor Relations Board*, 5 Cir. 103 Fed. (2) 157, 160, certiorari granted.

In *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, 83 L. Ed. 131, 138, this

Court held that the refusal of the Labor Board to hear the testimony of two witnesses was "arbitrary and unreasonable," and an "abuse of discretion." It would have been no less arbitrary and unreasonable, if the Board had received the testimony of those witnesses, and then ignored it—treated it as though it were not in the record.

Precisely that the Board did in the instant case. The evidence so ignored was highly important, and was uncontradicted, much of it stipulated. Both the majority and minority opinions below assume that the Board's reason for discarding these facts and the uncontradicted evidence by which they were proved, was that it thought them immaterial. Whether or not they were material is, of course, a question of law. The Board, by discarding them as immaterial, cannot preclude the Court from considering them on review. Under such circumstances, the right of review by the Circuit Court of Appeals would be frustrated; its exercise but an idle ceremony.

The facts thus ignored by the Board are set out in detail in the majority opinion (R. 228-230). See post pp. 40, 41, 42.

The Court below recognized the rule laid down in the two Greyhound Lines cases, *supra*. But it said (R. 228):

"In setting out the factual basis for the application of this rule of law in the pending case, the Board made no mention of certain facts that were *proved either by uncontradicted evidence or by stipulation of counsel*. The omission doubtless occurred because in the opinion of the Board

the facts referred to were immaterial to the issue; but, in our view, they must be taken into consideration since they *bear directly upon the inquiry* whether or not the Employees' Representative Committee is capable of representing the employees in collective bargaining, free from domination or interference by the employer. These facts are as follows<sup>5</sup> (Italics ours):

"During the whole life of the plan from 1927 until the time of the hearing before the trial examiner in August and September, 1937, the company has not interfered with, discouraged, encouraged, or in any way prevented the selection by the employees of representatives of their own choosing (*Stipulation, para. 2 and 3, R. 75-76*).

"All employees below the grade of leading man, who have been on the payroll for sixty days prior to the date fixed for nominations, are entitled to vote (*Stipulation, para. 8, R. 76*). The entire shipyard is divided into districts for the purpose of nominations and elections, so as to give each craft and each group of workmen a representative (*Stipulation, para. 1, R. 76*).

"Nominations and elections are conducted exclusively by the employees in accordance with rules prescribed by the Executive Committee of the Employee's Representative Committee. The plan requires that nominations and elections shall be made by secret ballot and shall be so conducted as to avoid undue influence or interference, and to insure fairness in the count. The ballots used are printed and furnished by the employees, and all expenses of the election since

<sup>5</sup>—In here quoting from the opinion, we have supplied after each statement a reference to the uncontradicted evidence by which it is proved. These references appear in italics.

1935 have been borne out of a fund contributed by the employees in 1929 and 1930 (*Stipulation, para. 8 and 9, R. 76*).

"A majority of the employees in each voting district are satisfied with the plan and with what has been accomplished under it (*Stipulation, para. 13, R. 78*).

"In 1927 the plan was submitted to the employees for their adoption or rejection, and it was adopted by a vote of 2,430 to 204 (*Stipulation, para. 1, R. 75*).

"On June 15, 1937, 5,718 out of 6,300 eligible voters at work on that day, elected 43 representatives on the Employees' Representative Committee, 28 white and 15 colored, to serve from July 1, 1937, to June 30, 1938 (*Stipulation, para. 5, R. 76*).

"On June 7, 1938, after the employees had been notified of the recommendation made by the trial examiner on March 9, 1938, that the Employees' Representative Committee be disestablished, a referendum with reference to the continuance of the plan was held. 3,455 workers voted to continue the plan, 562 voted to discontinue the plan, and 51 ballots were void. (*Supplemental Certificate of Board, R. 215*).

"On June 14, 1938, the annual election was held. 4,233 out of 4,889 men present at work elected 43 representatives to serve from July 1, 1938, to June 30, 1939. 42 votes were thrown out (*Supplemental Certificate of Board, R. 215*).

"The management of the Shipbuilding Company has always been willing to negotiate with the Committee in regard to any matter affecting wages, hours, or conditions of work, and the Committee has been successful from time to time in securing changes in these respects bene-



ficial to the men (*Travis, R. 127-129; Wilkins, R. 92, 93, 101, 108, 109; Carter, R. 142; Blanton, 39*).

"There has been no action on the part of the management or by any officers or persons in a supervisory capacity in the shipyard, to discourage membership in any union (*Blanton, R. 48-9; Robeson, R. 68; Rhinesmith, R. 54; Beazlie, R. 56; Tighe, R. 144*).

"For more than forty-three years prior to the hearing, there has been no labor dispute or disturbance that has interfered with the operation of the yard (*Fenton, R. 79; Trenwith, R. 78-79; Robeson, R. 72*).

"In addition to these uncontradicted facts, it is noteworthy that equal representation of the management and of the men on the joint committee prior to July 5, 1935, was not obnoxious to any statute then in force. The revision of the plan in 1937 was undertaken for the purpose of bringing the plan into literal harmony with the statute after doubts as to the constitutionality of the statute had been quieted by the decision of the Supreme Court in *Labor Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, on April 12, 1937" (*Wilkins, R. 91*).

The Court then discussed Articles VI and IX of the plan as amended in 1937, sustained the contention of respondent and the Employees Representative Committee as to the meaning and effect of these articles, noted the fact that since the hearing the features which the Board regarded as objectionable had been eliminated from them and concluded as follows:

"When all the circumstances of the case are considered, including not only the findings

in the Board's opinion but also the additional undisputed facts above set out, the inference that the Employees' Representative Committee 'is still the creature of the company', to use the language of the Board, cannot, in our opinion, be reasonably drawn. It was certainly not reprehensible for the men to confer with the management when important changes were to be made in a plan, lawful in its inception, that had served long and successfully to foster peaceable relations and satisfactory working conditions in the plant; and there is no reason to doubt the sincerity of the declaration in the preamble of the revised plan that the purpose was to ensure the employees of the company full freedom in self-organization and in the designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment. Consequently, there is no reasonable ground upon which the disestablishment of the organization of the men can be sustained."

### III.

IT WAS WITHIN THE POWER AND PROVINCE OF THE COURT BELOW TO CONSIDER THE "UNCONTESTED FACTS" MENTIONED IN ITS OPINION.

THE ACT CONFERS UPON THE CIRCUIT COURTS OF APPEALS POWER TO REVIEW ORDERS OF THE NATIONAL LABOR RELATIONS BOARD AND AUTHORIZES THE COURT TO EXAMINE THE WHOLE RECORD AND ASCERTAIN FOR ITSELF THE ISSUES PRESENTED, AND WHETHER THERE ARE MATERIAL FACTS NOT REPORTED BY THE BOARD.

Until Congress shall have enacted a uniform law governing the judicial review of decisions and orders

of administrative bodies, each statute creating such a body must stand upon its own footing; and the scope of the review contemplated by it must be determined by the language by which the power of review is conferred in that particular statute. The courts may not reduce the review procedure to a least common denominator when Congress has not seen fit to do so. Cases dealing with the power of the Circuit Court of Appeals on review of decisions of the Board of Tax Appeals, for instance, are not apposite in considering the power of that Court to review orders of the National Labor Relations Board. The power, in each instance, is conferred by a different statute, and by widely different language. In the case of the Board of Tax Appeals, the power of review is conferred by the following language:

"Upon such review, such courts shall have power to affirm or, if the decision of the Board is not in accordance with law, to modify or to reverse the decision of the Board, with or without remanding the case for a rehearing, as justice may require."

Section 1003 (b) of the Revenue Act of 1926, C. 27, 44 Stat. 9 I. R. C. Section 1141 (c) (1).

The jurisdiction of the Circuit Courts of Appeals to review decisions of the Board of Tax Appeals under this statute has, from the time of its enactment, been held by those courts to be limited to errors of law, though the court might look to the record to determine whether the Board's findings of fact were supported by evidence. These early decisions by Circuit Courts of

Appeals are in harmony with the later decisions of this Court.

*Phillips v. Commissioner of Internal Revenue*,  
283 U. S. 538-603.

*Helvering v. Rankin*, 295 U. S. 123-134.

In the last named case it is said that if the Board of Tax Appeals has failed to make an essential finding and the record on review is insufficient to provide the basis for final determination, the proper procedure is to remand the case, and this, even though the findings omitted by the Board might be supplied from an examination of the record.

A much more ample power of review is conferred by the language of the Federal Trade Commission Act, as construed by this Court.

*International Shoe Co. v. Federal Trade Commission*, 280 U. S. 291, 297.

*Federal Trade Commission v. Curtis Publishing Co.*, 260 U. S. 568.

THE REVIEW PROVISIONS OF THE NATIONAL LABOR  
RELATIONS ACT WERE TAKEN FROM THE  
FEDERAL TRADE COMMISSION ACT

In *Ford Motor Co. v. National Labor Relations Board*, 305 U. S. 364, 373, 83 L. Ed. 229-320, this Court recognized that the provisions of this Act with respect to a judicial review of orders of the National Labor Relations Board follow closely the statutory provisions for review of orders of the Federal Trade Commission. The fact is that the review provisions of the National Labor Relations Act (Sec. 10 (c)) are borrowed from

the Federal Trade Commission Act (U. S. Code, Title 15, Sec. 45) : and are expressed in substantially identical language,

In *Federal Trade Commission v. Curtis Publishing Co.*, *supra*, this Court said:

"Manifestly, the court must inquire whether the commission's findings of fact are supported by evidence. If so supported, they are conclusive. But, as the statute grants jurisdiction to make and enter, upon the pleadings, testimony, and proceedings, a decree affirming, modifying, or setting aside an order, *the court must also have power to examine the whole record and ascertain for itself the issues presented, and whether there are material facts not reported by the commission.* If there be substantial evidence relating to such facts from which different conclusions reasonably may be drawn, the matter may be and ordinarily, we think, should be, remanded to the commission,—the primary fact-finding body,—with direction to make additional findings; but, if, from all the circumstances, it clearly appears that, in the interest of justice, the controversy should be decided without further delay, the court has full power under the statute so to do. The language of the statute is broad, and confers power of review not found in the Interstate Commerce Act" (Italics ours).

The same rule was approved in *International Shoe Co. v. Federal Trade Commission*, 280 U. S. 291, 297.

When Congress adopted, and embodied in the National Labor Relations Act, this language from the Federal Trade Commission Act, it must be presumed to have done so with full knowledge of the construction



placed upon that language by this Court in the above decisions, and to have intended to adopt that construction along with the language<sup>6</sup>.

The reenactment, in the same or substantially the same terms, of a statute which has received judicial construction, amounts to a legislative adoption of such construction.

*United States v. Falk*, 204 U. S. 142.

*Heald v. District of Columbia*, 254 U. S. 20

The same rule applies in the construction of a statute enacted after a similar or cognate statute has been judicially construed.

*Bruce v. Tobin*, 245 U. S. 18.

*United States Navigation Co. v. Cunard S.S. Co.*,  
284 U. S. 484

The dissenting opinion in the court below rests upon the theory that the court ought not to consider "other facts not mentioned by the Board," and the learned Judge who wrote the dissent seemed to think that the power of the court in this respect "is no broader

6—That the procedure under this Act and the Federal Trade Commission Act is substantially the same was conceded by the General Counsel for the National Labor Relations Board when in testifying before the Senate Committee on Education and Labor at its hearings held April 25, 1939 (Part 2, page 381) he said:

"I would like to recall that when this act was before Congress this committee said in its report:

"Despite the widespread charges that the bill invokes novel procedure and vests unusual powers in an administrative agency, the bill is modeled closely upon numerous Federal statutes setting up administrative regulatory bodies of a quasi-judicial character. The common procedure is so well known that this committee deems it unnecessary in substantiation of this statement to refer to any analogous statutes save the Federal Trade Commission Act, section 5."

than in cases coming from the Board of Tax Appeals." This, we submit, is fundamentally erroneous. It overlooks the difference between the very limited review provided by the Tax Statute, and the broader powers conferred upon the court in reviewing decisions of the Federal Trade Commission and of the National Labor Relations Board. It was doubtless because he believed the court could not consider "other facts not mentioned by the Board," and in accordance with that belief refused to consider them himself, that the learned Judge dissented.

The power of the court to consider "other material facts not reported by the (Federal Trade) Commission" is expressly recognized by the above decisions. Where there is "substantial evidence relating to such facts from which *different* conclusions reasonably may be drawn" the matter may be and ordinarily should be remanded with directions to make additional findings; but even here,

"if from all the circumstances it clearly appears that, in the interest of justice the controversy should be decided without further delay, the Court has full power under the statute so to do. The language of the statute is broad and confers power of review not found in the Interstate Commerce Act";

and we may add, not found in the Tax Statute above quoted.

This is not a case in which the evidence relating to the omitted facts is such that different conclusions may reasonably be drawn from it. Here the omitted facts are "undisputed", often shown by stipulation, (R.

75). The power of the court to end the controversy without delay in such a case cannot be questioned. This was the situation in *National Labor Relations Board v. Sands Manufacturing Company*, 96 Fed. (2) 721, 724.

In that case the Circuit Court of Appeals for the Sixth Circuit, considered the uncontradicted evidence in connection with the Board's findings, precisely as did the court below in the instant case; and its action was approved by this Court. After stating that the findings of the Board as to facts, if supported by evidence, are conclusive, the Circuit Court of Appeals, in that case, said:

"The contention here is that the Board refused to make certain findings supported by the evidence, and that its conclusions either are based on no evidence, or are contrary to the Board's own findings of fact. The facts for the most part are not in dispute, and the principal question is whether the Board's findings, taken together with the admitted facts, compel a different conclusion." *Affirmed*, 306 U. S. 586. 332

And that Court *did* reach a different conclusion. On *certiorari* the question before this Court was thus stated by Mr. Justice Roberts:

"The respondent contends and the court below held that upon the findings of fact, and the uncontradicted evidence, the Board's conclusions are without support in the record. The petitioner insists that there is evidence to support them. From the findings, and the uncontradicted evidence, these facts appear."

And this Court then proceeded to review the uncontradicted evidence as well as the Board's findings of fact. 306 U. S. 586, 83 L. Ed., 488.

This decision, in the Sands case, was not announced in time to influence the opinions and decisions below: but it affords ample support for the majority opinion.

Moreover, the Board's finding in the instant case that the Employees Representative Committee was incapable of serving the employees as an independent bargaining agency, is an ultimate finding, which, even in cases coming from the Board of Tax Appeals, is subject to judicial review.

"The ultimate finding is a conclusion of law or at least a determination of a mixed question of law and fact. It is to be distinguished from the findings of primary, evidentiary, or circumstantial facts. It is subject to judicial review and, on such review, the Court may substitute its judgment for that of the Board."

*Helvering v. Tex-Penn Oil Co.*, 300 U. S. 481, at page 491.

But as indicated above, the limited review provided by statute in case of decisions of the Board of Tax Appeals does not apply to decisions of the National Labor Relations Board; and hence Tax decisions, such as *Helvering v. Rankin*, *supra*, and *Helvering v. National Grocery Co.*, 304 U. S. 282, are not controlling here.

*Swayne & Hoyt v. United States*, 300 U. S. 297, cited in the dissenting opinion is also not in point. The Court in that case was dealing with an order of the Sec-

retary of Commerce under the Shipping Act. In *United States Navigation Co. v. Cunard S. S. Co.*, *supra*, this Court pointed out that the Shipping Act, as respects rates and practices of carriers by water, closely parallels provisions of the Interstate Commerce Act relating to carriers by rail, and that the latter act having received judicial construction, Congress must have intended the Shipping Act to be given the same construction. As previously noted, this Court, speaking of the Federal Trade Commission Act, said in *Federal Trade Commission v. Curtis Publishing Company*, *supra*, "The language of the statute is broad, and confers powers of review not found in the Interstate Commerce Act." Neither are like powers of review found in the Shipping Act; but they are found in the National Labor Relations Act.

Counsel seem to concede that in thus considering evidence of facts "not reported" by the Board, the Court below did not transcend its powers. Thus, at page 42 of their brief, speaking of this evidence, they say:

"That evidence in the record concerning which the Board did not make particular findings of fact (*Supra*, p. 36) had, of course, been considered by the Board in making the findings it did. Consequently, the court could properly have considered it along with all of the other evidence in the record in determining whether the Board's findings were adequately supported."

Later, however (brief 35-56), counsel contend, in effect, that the reviewing court can in no event make final disposition of the case where the Board has not made essential findings, but must, in all such cases re-



mand the cause to that body. This is undoubtedly true of cases coming from the Board of Tax Appeals. *Helvering v. Rankin*, *supra*. But it is not true in Federal Trade Commission cases or Labor Board cases, except where the evidence of the omitted facts is of such a nature that different conclusions may reasonably be drawn from it. We have fully discussed this, *ante* p. 48, and need not repeat what was there said. But perhaps it should be said again that the evidence in the instant case is not of that nature. Here the evidence of the facts which the Board failed to "mention" was uncontradicted, much of it stipulated by the Board at the hearing. That situation was not present in any of the cases cited by the Board at p. 54 of its brief. In the instant case there was no "picking and choosing . . . among uncertain and conflicting inferences" as in *Federal Trade Commission v. Algoma Lumber Co.*, 291 U. S. 67, 73 and in *Federal Trade Commission v. Standard Education Society*, 302 U. S. 112, 117, cited by the Board. The question before the court below was precisely the same as the question before the Circuit Court of Appeals for the Sixth Circuit in the *Sands* case, *supra*. That question was whether the Board's findings taken together with the undisputed facts "compel a different conclusion" from that reached by the Board. Stated differently, the question was whether upon the whole record the Board's findings and conclusions were supported by the evidence. And that is the question here.

The answer to the Board's argument on pages 35-56 of its brief is, that what it there condemns, this Court approved in the *Sands* Case, *supra*. Significantly

enough, the Board fails to mention that case anywhere in its brief.

We may add that should the Court be of opinion that the Circuit Court of Appeals should have remanded the case to the Board for further findings, as counsel seem to suggest, then this Court should in no event direct that clause 2 (a) of the Board's order be enforced; but rather that the case be remanded to the Board for additional findings, on the undisputed evidence which, to quote from the Board's brief, page 53 (3) was "NOT MADE THE SUBJECT OF PARTICULAR FINDINGS BY THE BOARD."

#### IV.

THE COURT BELOW NOT ONLY HAD THE POWER TO EXAMINE THE WHOLE RECORD AND ASCERTAIN FOR ITSELF THE ISSUES PRESENTED, AND WHETHER THERE ARE MATERIAL FACTS NOT REPORTED BY THE BOARD; IT WAS ITS DUTY TO DO SO.

As we believe we have shown, the power of the court below to consider the "undisputed facts" mentioned in its opinion, and the justice and propriety of its doing so, are recognized and upheld by the decisions of this Court, culminating in the Sands Manufacturing Company case, *supra*. (See Point III).

Here we would stress the duty to exercise that power. If the court were possessed of the power to look to the whole record, and consider "undisputed facts" disclosed thereby, but under no duty to do so, it would not be a court in the sense of American or English jurisprudence, certainly not a court of equity.

The reviewing courts are not mere agencies for the enforcement of the Board's orders. By the express terms of the Act they are courts of equity. This Court in the Ford Motor Company case, *supra*, referred to the duty of these courts, as courts of equity, to administer justice according to equitable principles governing judicial action. It recognized the power of such a court to adjust its relief to the exigencies of the case in accordance with those principles. Thus the Chief Justice, speaking for the Court, said (305 U. S., at page 273):

*"The jurisdiction to review the orders of the Labor Relations Board is vested in a court with equity powers, and while the court must act within the bounds of the statute and without intruding upon the administrative province, it may adjust its relief to the exigencies of the case in accordance with the equitable principles governing judicial action. The purpose of the judicial review is consonant with that of the administrative proceeding itself,—to secure a just result with a minimum of technical requirements. (Italics supplied).*

We submit that the dissent below was founded upon an erroneous conception of the scope of the court's power of review under the Act. The Judge believed that the court had no right or power to consider any facts "not mentioned" by the Board. Upon that ground his criticism of the majority opinion is based.

If the Board by the simple expedient of failing to "mention" undisputed facts disclosed by the record, could exclude those facts from the consideration of the court, then the intent of Congress in conferring the

broad powers of review found in this Act would be defeated. A review by the court would, in such case, be but an idle ceremony and a delusion.

But the power of the court to consider facts shown by the record but "not reported" by the Board is now apparently conceded by the Board itself (brief, p. 42). And, conceded or not, that power is recognized by this Court. See Point III, *supra*. Hence the foundation for the dissent is swept away.

Because of his view of the limited power of the court on review, the learned dissenting judge considered none of the "undisputed facts", referred to in the majority opinion and therefore adopted the findings and conclusions of the Board. The dissent must be read in the light of this fact.

Counsel for the Board say (brief p. 55) that the court below sought to justify its action in looking to the whole record by characterizing the facts on which it relied as uncontradicted and they say:

"Yet actually, as already noted, the court fell into error in stating that respondent had not interfered with freedom of choice; that it had not discouraged union activity among the employees; and that all expenses of elections under the Plan since 1935 have been assumed by the employees."

Since every one of these facts is shown by a stipulation made by the Board at the hearing (R. 75) and there was no evidence to the contrary, it is difficult to see how the court could have done otherwise than it did.

Moreover the Chairman of the Board has admitted that these facts were proved on the record before the Board. Thus:

In the hearings before the Senate Committee on Education and Labor, 76 Cong. 1st session, held April 19, 24 and 25, 1939, to consider amendments to the Act, Mr. Madden, Chairman of the Board, was asked (Part 2, p. 323) by Senator Ellender the following question:

"Senator Ellender. Well, the reason I ask that question is that I would like to bring in this Newport News Shipbuilding and Drydock versus the National Labor Relations Board case.

"Here was a case, and I am reading from an excerpt from the case itself, wherein the facts were as follows:

"1. During the whole life of the committee the company did not interfere with the selection by the employees of representatives of their own choosing.

"2. Any employee 21 or over, and an American-born citizen, and on the pay roll a year, could be a representative. An employee on the pay roll 60 days could be.

"3. Nominations and elections were conducted solely by the employees.

"4. On several occasions the employees had indicated their approval of the plan by voting for representatives in large numbers and by a vote to continue the committee.

"5. The management of the company was always willing to negotiate with the committee.

"6. There was no action on the part of the management to discourage any union.

"7. For more than 43 years there was no labor dispute or disturbance at the plant.



"Now, I am just wondering how a case like that, with the facts as were found, as I have just read them, was ever brought before the Board?"

\* \* \* \* \*

"Senator Ellender. But they were really the facts found by the Board?

"Mr. Madden. No; they were *facts* which were *proved in the record before the Board*, but which we did not make findings on before because we thought they were immaterial. Two of the three judges thought that they were material, and so in their decision they add them to the other facts which were in the Board's findings" (*Italics ours*).

This is the answer to the assertion of counsel at page 56 of their brief that "the findings of the Board were on the whole record." That assertion we deny, as we do also the assertion on the same page that no essential finding was lacking in the Board's decision. As previously noted; some of the Board's findings were mere argumentative statements and cannot be properly considered definite findings of fact.

## V.

THE EMPLOYEES' REPRESENTATIVE COMMITTEE HAS FUNCTIONED WELL AS AN AGENCY FOR COLLECTIVE BARGAINING.

At page 44 of the Board's brief counsel make the amazing statement that

"the Plan has not resulted in a single collective agreement covering wages, hours of working

conditions during the 9 years the Plan had been in effect up to the time of the hearing."

This is a clear misstatement of fact. Irving Clark Wilkins, Secretary of the Committee, examined by counsel for the Intervener, testified (R. 92, 93; 94, 99, 100) that agreements covering wages, hours and conditions of work had been effected through the action of the Committee.

And again at R. 108-9:

"Redirect examination by Mr. Kearney:

"Q. Mr. Wilkins, Mr. Blum asked you about the minutes of April 13th, with regard to the action taken by the management, with regard to matters concerning the employment of the men. Will you read the minutes of that meeting—what that action was?

"A. (Reading.) 'The Committee recommends that the General Joint Committee request the management to allow overtime for hours worked in excess of 40 hours in any one week. Overtime for other purposes to remain as at present, that is, time and one-half for any work in excess of 8 hours in any one day, and double time for Sundays and legal holidays now recognized by the Company, and that the week-end be changed to 7 a. m. on Monday instead of as at present, making Saturday the 'penalty' day for most of the overtime in any one week.

"We further recommend that on the last week on the present basis the yard remain open on Saturday in order that the hourly employees may be able to make a full week, and suggest that special arrangement be made by the management to take care of certain weekly men

working seven days a week, such as watchmen, power house attendants, yard maintenance men, and so forth.

'We understand these men now earn a day a month vacation, whereby one day could be drawn from this vacation allowance to make them a full week. This week-end change would also make it possible for men losing time, due to bad weather, to make a full week by working Saturday.

'If the above recommendations are adopted the management to issue the necessary orders giving the date effective, and the details of operation.'

'The Committee suggests that the management discourage working Saturdays and Sundays, as most workmen wish this time off.

'We believe that by more intensive planning and cooperation a great deal of the so-called emergency work can be avoided.'

"That was the end of the recommendation.

"Q. Was that recommendation accepted?

"A. I will have to modify that. There was one other paragraph in this recommendation.

"Q. All right. Read that.

"A. (Reading) 'It was called to the Committee's attention that in some instances an employee having worked eight hours is sent home and called back to work after only eight hours' rest period, which required a man to work sixteen hours out of twenty-four. This question, however, does not come in line with the work designated for this Committee, but we mention it for the management's consideration.'

"Q. Now, the recommendations you made, were they accepted and acted upon by the management?

"A. It was. The management accepted it."

This detailed and uncontradicted testimony of Mr. Wilkins the Board's counsel ignore, and for their unfounded assertion quoted above, refer to Mr. Wilkins cross-examination at R. 99-100, which was to the effect that agreements between the employees and the company with respect to wages, hours and conditions of work usually take the form of requests or recommendations recorded in the minutes of the Committee and agreed to orally and put into effect by the management; and not of formal contracts *signed* by the company. Apparently the Board takes the view that unless an agreement is in writing, it is without force or effect.

Counsel for the Board believed and cited Mr. Wilkins' testimony on cross-examination. They could not have been unaware of his testimony in chief, as above quoted.

For additional testimony showing that the Committee has functioned satisfactorily as an agency for collective bargaining, see Blanton, R. 39; Travis, R. 127-129.

## VI.

THE CIRCUIT COURT OF APPEALS RIGHTLY REFUSED TO ENFORCE PARAGRAPH 2 (a) OF THE BOARD'S ORDER, REQUIRING WITHDRAWAL OF ~~RECOGNITION~~ FROM THE EMPLOYEES' REPRESENTATIVE COMMITTEE, AND THE DISESTABLISHMENT OF THE SAME.

If, as the Act professes, and has so often been said, its purpose is to protect commerce by promoting and

preserving industrial peace, then its policies will be best effectuated by leaving the Committee undisturbed as the court below has left it. In this field, as elsewhere, it has functioned well.

As indicated in the statement at the beginning of this brief, this case is unique in that it did not grow out of any controversy or labor dispute of any kind between Respondent and its employees.

At Respondent's plant there is peace in fact, not merely a theoretical peace. That kind of a peace counsel for the Board do not seem to understand. They speak of it as a "truce", though indulge their imaginations as to circumstances attending it.

A truce follows hostilities. Respondent's plant has never known hostilities. The Board's counsel regard this long era of peace with suspicion—as a lull before a possible storm (R. 44). It has been a long lull—lasting throughout the history of the Company, and for twelve years since the Plan was formed.

The Board says, through its counsel, that this *peace in fact* cannot be substituted for the "stable" peace contemplated by the Act. If by "stable peace" the Board means that sort of peace which we have witnessed in certain industries—the steel and automobile industries for instance, since the Board began to function there, we pray to be delivered from it. We prefer peace in fact, even though it be less exciting.

The Board's brief consists of an elaborate discussion of imaginary evils which, in theory, might result from the language of the plan itself, abstractly consid-



ered. Its entire argument is based upon assertions utterly lacking factual support.

—We quote from page 40 of the Board's brief, this choice bit of restrained argument, which is a fair sample of its treatment of this entire case, and which is not only without factual support in the record, but goes directly in the teeth of the "undisputed" facts mentioned by the court below (R. 228-230), many of them shown by stipulation and all of them by uncontradicted evidence. See pp. 40, 41, 42, *ante*.

"The claim that the employees, by their participation in the elections and by their vote in the referendum, have evidenced their free acceptance of the Plan, is entirely lacking in substance. It casually assumes that *respondent's efforts to suppress all freedom of choice have been unavailing. In view of respondent's thorough domination, support and interference with the Plan, the attitude of the employees toward it was and is necessarily shaped thereby. By the same token, the existence, membership, and functioning of the Plan must be ascribed, in large measure, to that influence.*" (Italics supplied).

Even the Trial Examiner said that there was no basis in the evidence for any finding by the Board that Respondent or any of its employees in a supervisory capacity had interfered with the employees' freedom of choice. See R. 130.

And see extract from testimony of the Chairman of the Labor Board, *ante*, pp. 56, 57.

CLAUSE 2 (a) IS INVALID BECAUSE UNREASONABLE  
AND NOT SHOWN TO BE NECESSARY

This *peace in fact*, existing at the time of the hearing, and unbroken for more than forty-three years prior to the hearing, exists today. There is not now and never has been any *menace to commerce* in the presence of the Employees' Representative Committee. Unless commerce is adversely affected, or there is reason, based upon *fact*, not *speculation*, to believe that it will be so affected, the Board has no authority to act. We deny that there is anything in the evidence to warrant a belief either that commerce is or will be menaced, if this drastic order is not enforced. For that reason, we deny the power of the Board to make the order. Such an order cannot be supported by guess, suspicion, speculation or by eloquently expressed theories of counsel. It must be bottomed on facts.

The menace to commerce must be real, not imaginary.

Not only does the record disclose no necessity for paragraph 2 (a); it affirmatively shows there is no such necessity. We submit that the Board was without power to pass this part of the order; and that paragraph 2 (a) was void *ab initio*.

ALSO INVALID BECAUSE PUNITIVE

In the Consolidated Edison Company Case, *supra*, this Court held that the authority of the Board to order affirmative action does not go so far as to confer a punitive jurisdiction enabling the Board to inflict upon the employee any penalty it may choose because he is en-

gaged in unfair labor practices, even though the Board be of the opinion that the policies of the Act might be effectuated by such an order. Clause 2 (a) of the Board's order was purely punitive in its origin and in its intended operation and effect. The Board lacked power to make it.

#### THE BOARD CONFESSES ERROR

In footnote 6 to the Board's brief at p. 9 counsel say:

"The Board's decision erroneously states (R. 197) that the nominations and elections were to be arranged for by the management's representatives."

This is a more serious error than, at first blush, might be supposed. It deserved more than a footnote.

The Board's finding appears at R. 197, and is

"Elections were arranged for by management representatives, 'but insofar as possible conducted by the employees themselves.'"

The Board here confused the functions of "the representatives of the management" and those of the Management's Representative."

Prior to 1937 all of the plans provided for "representatives of the management" and for a "Management's Representative" (See Articles 5 and 6 of 1931 Plan—R. 155). The former were representatives appointed by the Company and were equal in number to the elected representatives. The "Management's Representative" was one man (Mr. Robeson).

The functions of the "representatives of the management" and of the "Management's Representative" were wholly different. The former were on committees and functioned as committeemen. The duties of the latter may be said to be those of an intermediary. Precisely, his duties were to keep the Company "in touch" with the representatives as a whole, and to represent the Company in negotiating with them, their officers and committees. It was one of his stated duties to "respond promptly to any request from representatives, and to interview all of them from time to time, but not less frequently than once every month, with reference to matters of concern to employees, and report the result of such interviews to the Company." Under the 1937 plan there are no "representatives of the management" on the Committee.

### ELECTIONS

Thus by its own admission the Board erred when it found as a fact that "elections were arranged for by the management's representatives" (Board's decision R. 197). The error is fundamental because it goes to the whole case now before the Court. It cannot be cured merely by confessing error. This erroneous conception of a material feature of the case necessarily affected the Board's findings of fact regarding the conduct of the Company and, therefore, necessarily affected its conclusions of law and its order thereon.

The facts are that the plan provided that the Company should designate a Management's Representative (in this case Mr. Robeson was designated) who should be the person to represent the Company in negotiations

with the committee, its representatives and officers (1931 Plan, Art. VI, R. 155). He was a member of no committee. He had no vote.

By the express provisions of Article IV of the 1931 plan (R. 154) he, the Management's Representative (in this case Mr. Robeson) should arrange for nominations and elections. This provision was doubtless made because nominations and elections were held on the Company property, and it was thought that someone representing the Company should have charge of the physical arrangements, such for example, as the placing of the ballot boxes and chairs and tables customarily found at voting places in any election. And this is all that the provision could mean, because, by sub-paragraph 3 of Article IV, it was provided that insofar as possible nominations and elections shall be "conducted by the employees themselves in accordance with rules and regulations prescribed by the Executive Committee." They were to "be by secret ballot; and so conducted as to avoid undue influence or interference with voters in any manner whatsoever and to prevent any fraud in the counting of ballots." Article IV also provided that "on the day of nomination each duly qualified voter shall be furnished with a ballot on which *he shall write* the names of the persons he desires to nominate as Representatives." (Italics ours).

When the two provisions which are the subject of criticism are read together it will be apparent that there is nothing reprehensible about the provision that "nominations and elections shall be arranged for by the Management's Representative (Mr. Robeson). This provision is not found in the 1937 plan.



It is clear that when the Board found that "elections were arranged for by the 'management's representatives'", meaning, of course, the appointed representatives of the management, it labored under the erroneous notion that because appointed representatives of the management equaled in number the elected representatives, the Company controlled the elections. Such is not the case, and the evidence is that all elections were fairly held, without the exertion of any influence whatever by the Company. It was so stipulated. The Board has not contended to the contrary beyond the erroneous statement in its decision now admitted to be error.

However, as stated, this error is fundamental. It necessarily had a part in erroneously influencing the judgment of the Board in reaching its final conclusion and its order thereon.

#### CASES CITED BY THE BOARD EASILY DISTINGUISHABLE ON THEIR FACTS

Counsel for the Board at page 31 of their brief say:

"As we have shown above, even after the 1937 revision the Plan was indistinguishable, except in minor matters of detail, from the organization which was ordered to be disestablished in *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 270."

Even if it were admitted that the two plans are similar in form, this would be far from admitting that there is any similarity in the character, history and

operation of the organizations set up under them, or in their respective relations to the employer.

We have already taken occasion to point out that there is no similarity in point of fact between the instant case and the principal cases cited on behalf of the Board, namely, the Pacific Greyhound Lines case, Pennsylvania Greyhound Lines case, and the Fansteel Metallurgical Corporation case. Here we distinguish them more in detail. First, the Pennsylvania Greyhound case. In that case the officers and other representatives of the company were active in promoting the plan, in urging employees to join the association set up under the plan and in the preparation of details of organization, including the by-laws, in presiding over organization meetings and in selecting employee representatives of the organization.

None of these things happened in the instant case and there was no evidence or finding that any of them did happen. On the contrary, the uncontradicted evidence shows that they did not happen.

In the Pennsylvania case certain of the company's employees organized in May, 1936, a local union affiliated with the American Federation of Labor, and continued to hold meetings after the passage of the Act in July, 1935. Before and after that date the Pennsylvania Company and its officers were active in warning employees against joining the union and threatening them with discharge if they should join. In the instant case, as stated in the court's opinion, and fully supported by the uncontradicted evidence, respondent has never been anti-union.

The Pacific Greyhound Case: There the Company took an active and leading part in the organization of the Association and from the time of the organization up to the time of the hearing before the Board continuously interfered with and dominated the internal administration of the Association and contributed to its support. The Company twice made successful use of the Association as a means to forestall attempts to organize its employees in an outside union, once in 1933 and again in 1934. The officers of the company were active in persuading, threatening and coercing employees to join or remain members of the Association and in urging them not to join the rival unions. When, in 1935, following the passage of the act, the employees attempted to establish another labor organization, they were met by persuasion and warnings of the company's employees, as well as the company's officers not to join the new union and by threats of discharge in case they did. Nothing of the kind has happened in the instant case and there is no evidence or finding that it did.

As to the Fansteel case the Company union there involved was actively promoted by the company in the midst of a bitter labor war in its plant. There is no similarity between the facts in that case and in the facts in the case at bar.

#### THE PLAN AS A CONTRACT

In certain limited aspects the Plan is a contract between Respondent and its employees. Inartistically drawn it certainly is. It bears internal evidence of having been the work, not of lawyers, but of laymen. Thus "any article in this book (sic) may be amended,"

etc, (Board Ex. 1-K R. 152). The Board says (brief 28) the Plan is obviously not a contract because "no one is bound to do anything. There is no provision for signatures and there are none in fact." Here again counsel reveal their philosophy that a promise, to be binding, must be in writing and signed; and here again they misstate the facts when they say no one is bound to do anything. Certainly all of the employees who adhere to the Plan and exercise their right to vote under it are bound by its provisions; and Respondent having recognized the organization with knowledge of the provisions of the Plan under which it functions, is bound to appoint a "Management's Representative" (Art. V, R. 150), whose duty it is to keep the management in touch with the Employee Representatives; and is also bound to treat with any employee or group of employees having a grievance, as provided by the Plan (Art. VII, R. 151-2). The Plan is regarded by the employees as a contract.

Mr. Wilkins testified R. 90:

"Well, suppose we pass that by, and let me ask you this question, Mr. Wilkins. You are referring to Board's exhibit 1-K, are you? Are you familiar with this book?

"A. Yes, sir; I am.

"Q. What does that represent, Mr. Wilkins, so far as the employees in the yard are concerned? What is their understanding of that?

"A. That is a contract between the management of the yard and the employees, together with the conditions and plan of operation of correcting any unsatisfactory conditions under which the employees work."

Counsel for the Board seem to attach importance to the fact that the word "Agreed" does not appear in the preamble of the 1937 Plan (Footnote 10, brief 28).

The closing words of that preamble, after reciting the purposes of the organization, are:

"the principles of employee representation are hereby *reaffirmed* by the employees and the Company and to those ends the following *rules* are *hereby adopted*" (R. 147. Italics supplied).

Between *reaffirmed* and *agreed*, there would seem to be little to choose. It is upon such trifles as this that the Board has built its case.

To the extent indicated above the Plan is a contract between respondent and its employees. It is not, in itself, an agreement fixing hours, wages and conditions of work. Agreements of that class are made with the Committee pursuant to it. Whatever its artistic defects it has always been interpreted on both sides to mean that respondent has nothing to do with the internal affairs of the Committee. In those affairs it has never interfered.

#### ADJUSTMENT OF GRIEVANCES

The Board's counsel vigorously denounce the grievance procedure provided by the Plan. They say it "ended in a blank wall"; and that arbitration could be had only if Respondent's President agreed (Brief 21, 22), failing to state that the employees must also agree. They refer to this as "an abortive procedure" for the arbitration of grievances (Brief 23). They overlook the fact that the same things may be said of any



agreement to recognize an outside union, and that they involve no violation of the Act.

This Court has held that

"The provision of section 9 (of the Act) \* \* \* \* imposes upon the respondent only the duty of conferring and negotiating with the authorized representatives of its employees for the purpose of settling a labor dispute."

\* \* \* \* \*

"The Act does not compel agreements between employers and employees. It does not compel any agreement whatever. *National Labor Relations Board v. Jones & Laughlin S. Corp.*, 301 U. S. 1, at pp. 44, 45.

Negotiation in any case may "end in a blank wall." For such situation the act reserves to labor the powerful weapon of the strike. That privilege is nowhere denied the employees in the Plan involved in this case.

#### ARTICLES VI AND IX

We need not concern ourselves with the question whether these two articles of the Plan have or have not been eliminated. As shown more in detail, post pp. 75-77, the court below, before referring to their elimination, had sustained the contention of both Respondent and Intervener, based upon the practical construction given the Plan throughout its history by both. Thus R. 229:

"The Shipbuilding Company and the Employees' Representative Committee assert that the provisions of Articles VI and IX were understood by them to apply to matters pertaining to the rights of the company under the plan, and

were not intended to affect or restrict the independence of the committee in its capacity as a representative of the men. The Board on its part contends that the plan clothes the company with power in each instance to veto every proposal adopted by the committee, and every proposed amendment to the plan itself. In our opinion, the view of the Shipbuilding Company and the Employees' Committee is more nearly correct, and it is of significance that in the actual operation of the plan, the provisions objected to have never been invoked by the company."

To illustrate what is meant by "matters pertaining to the rights of the Company under the plan."

First as to Art. VI.

We point to the testimony of Mr. Wilkins, *ante*, pp. 58-60. Here it is clearly shown that in the usual course, questions of wages, hours and conditions of work were taken up first in the Committee. They were there thrashed out and a resolution embodying the wishes of the employees was passed and recorded in the minutes. These resolutions frequently embodied such matters as increased wages, or overtime, or vacations with pay. Naturally they could not become effective until agreed to by the Company. Hence the action of the Committee was in such cases reported to the Company, and, when approved by the latter, its requests or recommendations were put into effect. That, under the practical construction given to Art. VI by both parties throughout the life of the Plan, is the only kind of action of the Committee requiring Company approval.

Art. IX. This was understood by both parties in the same way. The Plan imposed upon Respondent

the duty of appointing a Management's Representative to keep Employees and Management in touch with each other and of guaranteeing the independence of representatives, and also the duty to permit any employee or group of employees to take up any grievance with officers of the Company. It is manifest that should the plan be so amended as to impose additional duties upon the Company, the latter had the right to say whether it would, under such conditions, continue to recognize the Committee as an agency for collective bargaining. This was the reason and the only reason for the provision that amendments be submitted to the Company.

The various plans have always been so understood by both employer and employee. The practical construction which the parties put upon the terms of their own contract is entitled to prevail over the literal meaning of the contract. *District of Columbia v. Gallaher*, 124 U. S. 505.

And where a written instrument is susceptible of two interpretations, one of which makes it illegal (the effect of the Board's interpretation) and one of which makes it legal (the effect of the interpretations of petitioner and its employees), the interpretation which makes the instrument legal will be adopted by the Courts. *Great Northern Ry. Co. v. Delmar*, 283 U. S. 686; *Hobbs v. McLean*, 117 U. S. 567.

We might add that this provision of Article IX was a distinct limitation upon the Company.

The Board's counsel repeatedly aver (brief pages 35 to 56) that the court below bottomed its conclusion that paragraph 2 (a) of the Board's order ought not to be enforced largely upon assertions by counsel for

the intervener, and data contained in the Board's Supplemental Certificate. These alleged assertions and data were:

(a) Statement by counsel for the intervener made in a reply brief filed after argument in the court below to the effect that since the argument Articles VI and IX of the plan had been amended; and

(b) The data submitted to the Board by counsel for the intervener after the argument before the Board, but prior to its decision, regarding the referendum mentioned in the Board's supplemental certificate (R. pp. 215-19).

*First*, as to (a). On the argument in the court below counsel for the Board "requested the privilege of filing additional briefs and this privilege was accorded to all parties" (Opinion R. 230). In his reply brief filed pursuant to this leave counsel for the intervener made the statements set out in footnote 14, pages 37-78 of the Board's brief. But the context of the Court's opinion clearly shows that it was not influenced by these statements of counsel. In its decision the Court had already indicated its agreement with the contentions of the Committee and the Company that Articles VI and IX properly construed in the light of the evidence meant only that those provisions

"were understood by them to apply to matters pertaining to the rights of the Company under the Plan, and were not intended to affect or restrict the independence of the Committee in its capacity as a representative of the men" (Opinion R. 229).

The court, after stating the respective contentions of the parties, correctly held (R. 230) :

"... In our opinion, the view of the Shipbuilding Company and the Employees' Committee is more nearly correct, and it is of significance that in the actual operation of the plan the provisions objected to have never been invoked by the company. . . ."

It was after the court had thus definitely decided the point that it employed the language to which counsel for the Board take exception. This was evidently done merely to show that the question was no longer of *practical* importance. The court said:

"The controversy, however, is no longer of importance, since both of the provisions have now been eliminated from the plan. During the argument of the case in this court, counsel were invited to discuss the propriety of a modification of the order of the Board so as to require the elimination of the provisions objected to, rather than a disestablishment of the organization. Counsel for the intervening organization stated that on its behalf he had unsuccessfully requested the Board to advise him what changes in its opinion would render the plan free from objection. Counsel for the Board requested the privilege of filing additional briefs, and this privilege was accorded to all parties. We learn, from the briefs filed *in reply to the Board's supplemental brief*, that Articles VI and IX have been amended by striking therefrom the provisions to which objections has been lodged."

The repeated statements of counsel for the Board that the decision below was wrong *because* it was "bot-



tomed" upon assertions of counsel not in the record (Brief pp. 35 et seq; 45 et seq), or because it was based on the fact the Plan was amended by the employees after argument (Brief pp. 37, 46), and was "used as a basis for modifying the order of the Board" (R. 48), are groundless.

The language in the opinion of the court below to which the Board's counsel take exception was a *dictum*, it was unnecessary to the decision and was harmless. The court's view previously expressed that the plan as written does not mean what the Board contends is in no respect affected. The decision will stand unaffected even were the language excepted to extracted bodily from the opinion.

Thus it is made evident that the question whether or not the matter was "moot" is nowhere involved, as counsel for the Board seemed to think (Brief pp. 48-49). This is necessarily true because the Court's decision is based upon its own construction of the printed language of the plan and not upon any action taken by the Committee subsequent to the argument.

*Second (b).* This data, as has been previously stated *supra*, pp. 36-7, was certified by the Board as a part of the record. The point was not made in the court below, and is otherwise without merit.

It is settled practice in the Federal Courts that objections must be timely. As early as 1878 this Court refused to consider an objection to the judgment of the Circuit Court, which could have been but had not been called to the attention of that Court. *Newcomb v. Wood*, 97 U. S. 581. This Court said:

"Two of the three referees only signed the award, but the attention of the court was not called to the fact when the report was confirmed and the judgment was entered. The omission was amendable, and *non constat* but that the amendment could and would have been made if the objections had been suggested. It would be fair neither to the court nor the other party to permit the objection to be raised here for the first time. Under the circumstances, it must be held to have been *conclusively waived*, and the plaintiff in error cannot be heard now to insist upon it." (Citing cases). (Italics ours).

#### UNAFFILIATED UNIONS ARE LEGAL

There is nothing in the Act to forbid the formation and maintenance of an unaffiliated union.

"A union limited to the employees of a single employer is as legal as any other." *Balls-ton-Stillwater Knitting Co., Inc. v. National Labor Relations Board*, 98 Fed. (2) 758 at p. 762.

Nor was the Act intended to prevent normal relations and friendly intercourse between employer and employee.

As was said by this Court of the Railway Labor Act of 1926, its language

"is not to be taken as interdicting normal relations and innocent communications which are a part of all friendly intercourse, albeit between employer and employees." *Texas & N. O. R. Co. v. Brotherhood R. & S. S. Clerks*, 281 U. S. 548-571, at page 567.

The policy of the Act can best be effectuated by encouraging normal and friendly human relationships between employer and employee.

In *Standard Lumber & Storage Company v. National Labor Relations Board* (4th Cir.), 97 Fed. (2) 531, the court declined to follow an interpretation by the Board which, in the court's opinion, would not

"effectuate the policies of an act designed to remove the sources of industrial strife by encouraging the friendly adjustment of industrial disputes"

Domination and interference with an employee organization cannot be inferred from the fact that feelings of mutual friendship and respect characterize the relations between employer and employees. Nor is it a sinister circumstance, as the Board appears to think in this case, that unbroken peace has prevailed throughout the history of a plant. Domination and interference mean something quite different from this.

"The intent of Congress is clear with respect to the sort of conduct that is prohibited. 'Interference' with freedom of action and 'coercion' refer to well understood concepts of the law." *Railway Clerk's case, supra.*

Again,

"To constitute domination or interference by the employer we think that it must appear that the employees are acting for him rather than for themselves, or that the employer in some manner gives aid to one group which he withholds from the other, or discriminates in favor

of members of a labor organization or against non-members." *Ballston-Stillwater Knitting Co. v. National Labor Relations Board, supra.*

Counsel for the Board at page 39 of their brief admit that

"The *structure* of such an organization is not conclusive in determining whether it has been foisted upon the employees and whether they are, in truth free to choose a representative" (*Italics supplied*).

That is quite true. These questions depend on other facts than the mere formal provisions of the Plan. Yet it was upon these formal provisions and nothing else of importance that the Board based its findings and is now urging its case.

Mr. Justice Roberts in *The Associated Press v. National Labor Relations Board*, 301 U. S. 103, 141, at p. 132, said:

"Courts deal with cases upon the basis of the facts disclosed, never with non-existent and assumed circumstances."

Each case of alleged company domination and interference must necessarily be decided upon its own facts. The principle controlling the right of the Board to order withdrawal of recognition from an organization of its employees was discussed in the *Pennsylvania Greyhound* case and the *Pacific Greyhound* case, *supra*.

In each of those cases there was ample basis for the Board's order. The Court, however, made it clear that its decision was based upon the facts before it. Thus, in the *Pennsylvania* case, it said:

"We may assume that there are situations in which the Board would not be warranted in concluding that there was any occasion for withdrawal of employer recognition of an existing union before an election by employees under Section 9 (c), even though it had ordered the employer to cease unfair labor practices."

We respectfully submit that this is such a case. The court below rightly appraised the situation when it said (R. 230) :

"The National Labor Relations Act was designed to deal with the actualities of industrial life in this country, and to promote peace in relations between employer and employees by securing to employees the right, too frequently denied in the past, to organize and bargain collectively, with complete freedom and independence, through representatives of their own choosing. The purpose of the Act will not be served by destroying an organization that is without doubt the chosen representative of the great majority of the employees, even though it may be thought that their decision to restrict their spokesmen to American born fellow workmen is unwise. To deny them this right is to ignore the express command of the statute."

## VII

### THE COURT BELOW DID NOT HOLD THAT THERE HAD BEEN ANY VIOLATION OF THE ACT

Counsel say (brief p. 18) that respondent has *admittedly* engaged in "unfair labor practices" because it did not file a cross petition. It had no need to do so.



Respondent did not file an original petition for *certiorari* because the decree inhibited it only from doing what it was not then doing and had no desire to do. It is no great hardship, though perhaps a little grating on the sensibilities, to be enjoined from doing what one has no wish to do and no intention of doing. If there be anything in the holding of the court below to which respondent should now except, it can do so without a cross petition. See p. 85 post.

Counsel also say, brief p. 18, that respondent did not attempt, in its brief in opposition to the Board's petition for *certiorari*, to support the decision of the court below on the ground that there had been no violation of the Act. This is not true.

We quote from our brief in opposition:

"Petitioner states that the court below upheld the conclusion of the Board that respondent had been guilty of violations of Section 8 (1) and (2) of the Act in dominating, interfering with and contributing support to the Plan.

"This is a clear misconception of the action of the court. The court did not hold that respondent had been 'guilty' of violating the Act in any particular \* \* \* it disapproved, as not supported by substantial evidence, the ultimate finding of the Board that the Committee is still the creature of the Company; that it is company-dominated and incapable of representing the employees for purposes of collective bargaining. In the light of this holding the decree of the court below is perfectly consistent.

"A 'cease and desist' order does not necessarily imply that the thing inhibited is being practiced up to and at the time of the order. At

times it is intended to operate only to prohibit future acts. This was true of the portion of the Board's order in the Consolidated Edison case, *supra*, which related to industrial espionage.

\* \* \* \* \*

"From the whole tenor of the majority opinion below, it is apparent that when the court enforced the negative provisions of the Board's order, it meant only to bar the resumption of acts lawful when done, but which had ceased, after they became unlawful.

"Portions of the order could apply to nothing else than future acts. For instance, respondent is directed to cease and desist from

"the formation or administration of any *other* labor organization of its employees, and contributing support to \* \* \* any *other* labor organization of its employees" (Italics ours). Brief in Opposition, pp. 14-16.

In view of the foregoing, we fail to understand by what process of reasoning counsel for the Board find it possible to say that respondent did not attempt in its brief in opposition to the petition for *certiorari* to support the decision of the court below on the ground that there has been no violation of the Act. Respondent urged the point.

RESPONDENT DID NOT BELIEVE THAT IT WAS  
SUBJECT TO THE ACT

Of course, as counsel for the Board say (brief 19), the fact that the act was not known to be constitutional until the publication of the Jones & Laughlin decision

of April 12, 1937, is immaterial. But it is not immaterial, on the contrary, it is most *material* and *important* that Respondent, relying upon the decisions of this Court, believed, and had the right to believe, that the Act did not apply to it. An unbroken line of decisions by this Court beginning with *Kidd v Pearson*, 128 U. S. 1, and culminating in the *Schechter Poultry* case, 295 U. S. 347, and in the *Carter Coal Company* case, 298 U. S. 238, had held that manufacturing or production, in itself, was not commerce.

Respondent was and is engaged solely in production. It did not believe that the Act applied to it. After the Board filed its complaint, respondent, in entire good faith, brought a suit to enjoin the proceeding on the ground that the Act had no application to it, and in consequence, the Board was without jurisdiction. It had been held by the Circuit Court of Appeals for the First Circuit in *Myers v. Bethlehem Shipbuilding Company*, 88 Fed. (2) 154, 89 Fed. (2) 1000, that the Act did not apply to the business of building and repairing ships, and that the Board had no jurisdiction of such a business (Reversed by this Court on other grounds, 303 U. S. 41). Surely respondent is not to be condemned for relying upon the decisions of this Court to the effect that production is not commerce, nor to be punished for seeking to ascertain its rights by an orderly proceeding in court.

Respondent still did not believe that the Act applied to it. That being so, it would not be surprising had it disregarded the Act altogether. However all that did happen was, that the bill for printing the booklet containing the Plan printed in May or June 1937, was paid

by the Company; and prior to the hearing minutes of the Committee had been mimeographed in one of its offices, though there is no evidence that the Company knew of this. Doubtless it would, at that time, have consented if it had known it. The distribution of minutes to the members of the Committee through the Shipyard's messenger service means *nothing*. That service is available for the free and unrestricted use of any employee of the Yard for purely private and personal services (Blanton, R. 43; Wilkins, R. 110).

It is upon such *trivia* as this that counsel assert that respondent had violated the law, or was at the time of the hearing doing the things that the negative portions of the Board's subsequent order prohibited.

But if the fact that the court upheld these negative provisions can possibly be construed as a holding by the court that respondent had violated the law, rather than as above indicated, a mere prohibition against the resumption of acts lawful when done but which had ceased after they became unlawful, then that construction or holding is wholly without evidence to support it, and should be disapproved.

In saying this we seek no enlargement of the rights of respondent under the decree and no diminution of the rights of its adversary.

"Without a cross appeal, an appellee may urge in support of a decree any matter appearing in the record, although involving an attack on the reasoning of the lower court or an insistence upon a matter overlooked or ignored by it. What he may not do in the absence of a cross appeal is to attack the decree with a view, either to enlarging his own rights thereunder or of

lessening those of his adversary, whether he seeks to correct an error or to supplement the decree with respect to a matter not dealt with below." *Morley Const. Co., et al v. Maryland Casualty Co.*, 300 U. S. 189-193. Opinion by Mr. Justice Cardozo.

## CONCLUSION

The Board arbitrarily discarded practically all of the evidence that was favorable to Respondent and the Intervener. That evidence shows conclusively that paragraph 2 (a) of the Board's order was unwarranted either in law or in fact. It disclosed a perfectly tranquil situation at Respondent's plant—an industrial peace unbroken throughout the history of Respondent's business. It establishes beyond cavil that the Employees' Representative Committee has contributed to that peace; that through it the employees have not only safe-guarded and protected their own rights and interests; but have promoted and fostered a spirit of friendly cooperation between themselves and Respondent. The facts established by this discarded evidence are summarized in the opinion, *ante*, pp. 40, 41, 42 and also at p. 56; *ante*, in connection with the testimony of the Chairman of the Board before the Senate Committee now considering amendments to the Act. That these facts are proved by the evidence in the record is not only clearly shown by the record itself, but, as previously noted (*ante* p. 56), has been publicly admitted by the Chairman of the Board. That the Board thought them immaterial does not exclude them from the consideration of the Court. On these facts it is clear that there is no menace to commerce, past, present or prospective in the existence and functioning



of the Employees' Representative Committee at Respondent's plant. Without a threat to commerce, actual or reasonably to be apprehended, such apprehension to be founded not upon suspicion, speculation or guess work, but upon facts, the Board lacked authority to order the disestablishment of the Committee, or the withdrawal of recognition from it. For this reason, and also because it was punitive in its origin and intended operation and effect paragraph 2 (a) of the Board's order is void. There was no warrant in the evidence for the passing of an order for the destruction of "an organization that is without doubt the chosen representative of the great majority of the employees" (Opinion R: 230).

For these and other reasons stated in the foregoing pages of this brief, we respectfully submit that there is no error in the decree of the court below of which the Board can complain, and that the said decree should be affirmed.

Very respectfully submitted,

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IN THE  
**Supreme Court of the United States**

**No. 20**

**NATIONAL LABOR RELATIONS BOARD,**  
*Petitioner*

**v.**

**NEWPORT NEWS SHIPBUILDING AND  
DRY DOCK COMPANY, A Corporation,**  
*Respondent*

**ON A WRIT OF CERTIORARI TO THE UNITED STATES  
CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT**

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**Brief for the Employees' Representative Committee  
of the Newport News Shipbuilding and  
Dry Dock Company, Intervener**

---

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**THE PARTIES**

For convenience, the Petitioner will be referred to as the "Board"; the Newport News Shipbuilding and Dry Dock Company as the "Respondent, Shipyard or Company"; and the Employees Representative Committee of the Newport News Shipbuilding and Dry Dock Company as the "Committee or Intervener"; and the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C. Supp. IV, Sec. 151 et seq.), as the "Act."

(1)

### **QUESTION PRESENTED**

The question is, where the uncontradicted evidence shows that employees have selected as their representatives, for purpose of collective bargaining, fellow employees of their own choosing, free from interference or control of the employer and these representatives constituted a committee to deal with the management, whether the Board is justified in ordering the disestablishment of the employees' representatives, upon finding the employer contributed support to such an organization, in violation of Section 8 (2) of the Act, or whether the Circuit Court of Appeals was correct in eliminating from the Board's order the provision for a disestablishment of the Employees' Committee because there was no evidence to justify such action.

### **STATEMENT OF THE CASE**

The brief of the Newport News Shipbuilding and Dry Dock Company, the Respondent in this matter, so correctly sets forth the facts and issues in this case, (many of which were omitted in the Board's brief) that the Intervener desires to adopt the brief filed by the Respondent as its brief.

The charge on which the complaint in this matter issued was made by the Industrial Union of Marine and Shipbuilding Workers of America, a labor organization, with its offices at 2332 Broadway, Camden, New Jersey (R. 1-4). The original charge and the complaint issued as a result thereof alleges certain employees of the Newport News Shipbuilding and Dry Dock Company were improperly discharged in violation of the National Labor Relations Act because of union membership and union activities. The In-

tervener was not interested or concerned with these charges in the complaint and at no time during the proceedings in this matter did it undertake to make any defense to these charges. The Board found that there was no evidence to sustain these charges of improper discharges because of union membership and union activities.

It has been the Intervener's contention from the start that the charges were filed in order to disband and discontinue the Employees' Representative Committee of the Newport News Shipbuilding and Dry Dock Company with the hope, if this could be obtained that the employees of that organization would join the Industrial Union of Marine and Shipbuilding Workers of America, an affiliate of the C. I. O. The charge that seven employees of the Company were improperly discharged in violation of the National Labor Relations Act, because they joined and assisted a labor organization and because of union activities, was simply used as an excuse to file the charge. The real reason for filing of the charge was to get the Employees' Representative Committee out of the way so that the Industrial Union of Marine and Shipbuilding Workers of America could have a clear field.

The Board has found that none of the men, who claimed to have been illegally discharged, were so discharged. They found that the Company had been guilty of unfair labor practices and ordered that these practices cease and further the disestablishment of the Committee. Thus fully accomplishing the purpose for which the charge was filed.

From this it can be plainly seen that the decision of this Court affects the continued existence of the Committee and that the Committee is the most vitally interested of all parties in this case.

**RESUME OF FACTS IN AS FAR AS THEY CONCERN  
THE EMPLOYEES' REPRESENTATIVE  
COMMITTEE**

For more than forty-three years prior to the filing of the complaint under consideration the Newport News Shipbuilding and Dry Dock Company has never had a labor dispute or disturbance that interfered with the operation of the Shipyard (R. 79).

In 1927 the Employees' Representative Plan was submitted to the employees of the Newport News Shipbuilding and Dry Dock Company for their adoption or rejection and it was adopted by a vote of 2430 for the Plan and 204 against the Plan. Since 1927 the Employees' Representative Committee has represented the employees in bargaining with the employer, and until June 30, 1937 the Employees' Representative Committee met with a Committee of similar number appointed by the Management. These two Committees met, discussed and negotiated in regard to matters affecting hours, wages and conditions of work. The General Joint Committee consisting of representatives of the Workmen and representatives of the Management successfully and peacefully negotiated all questions that arose to the satisfaction of the employees and employer, so that no labor dispute, large or small, has existed in the Newport News Shipbuilding and Dry Dock Company's plant during



the time that the Employees' Representative Committee has been in existence.

On June 15, 1937,<sup>1</sup> 5,718 out of 6,300 eligible employee voters present at work on that day participated in the election of 43 representatives to serve as Employees' Representative Committee from July 1, 1937, to June 30, 1938. It is admitted by the stipulation there was no interference by the Shipyard with the selection or election of these representatives (R. 76).

On June 7, 1938, after the Employees' Representative Committee and the employees in the Shipyard had been advised of the Trial Examiner's report and recommendation, a referendum was held by the employees of the Shipyard to determine whether the Employees' Representation Plan should continue. The elected Employees' Representative Committee desired to know whether the men in the yard stood fully behind them. In that election 75.00% of the employees present at work and below the grade of leading man participated, and voted 3,455 to continue the Plan against 562 to discontinue, with 51 void ballots. Pursuant to this mandate and in accordance with the By-Laws, the election of employee representatives was held on June 14, 1938, and 4,233 out of 4,889 voters present for work on that day, or 86.50% employees present for work on that day, participated in the voting and elected forty-three employees as the Employees' Representative Committee and to serve from July 1, 1938, to June 30, 1939, there

<sup>1</sup>1--On June 18, 1937 the complaint was issued.

being an eligible voting list at that time of 5,378 (R. 219).

Since the Writ of Certiorari was granted in this case the employees have had another election for the selection of representatives.<sup>2</sup>

It was stipulated (R. 75-78) :

"2. That from 1927 to the present the employees selected their representatives from the various districts by nominations and elections participated in only by employees below the rank of leading man and that none of the employees that participated in the election occupied any supervisory position.

"3. That the Shipyard did not interfere with, select, discourage, encourage or in any way prevent the selection of representatives by the employees of representatives of their own choosing.

"5. That there has been elected in accordance with the employees' representation Plan in force at the time of the election, by a majority of the employees of the Newport News Shipbuilding and Dry Dock Company (5,718 out of 6,300 eligible employee voters present at work on the day of election June 15, 1937) 43 representatives, 28 white and 15 colored, to serve as representatives from July 1, 1937, to June 30, 1938, and that these representatives compose the Employees' Representative Committee.

2--On June 20, 1939, 5217 out of 6008 employees present at work that day eligible to vote, or 86.7% voted in the election of employees representatives for the year 1939-1940. There were on the rolls of the company eligible to vote 6405 so that 81.1% of all eligible voters whether present for work or absent for one reason or another, participated in the election.

"8. Any employee below the grade of leading man who has been on the company's payroll for the period of one (1) year prior to nominations, who is twenty-one (21) years of age or over, and who is an American born citizen shall be qualified for election, as a representative. All employees who have been on the company's payroll for a period of sixty (60) days prior to the date fixed for nominations is entitled to vote, except company officials and supervisors, from leading men up.

"Nominations and elections of representatives are conducted exclusively by the employees and in accordance with the rules and regulations prescribed by the executive committee of the Employees Representative Committee, and as set forth in the plan, nominations and elections are by secret ballot and so conducted as to avoid undue influence or interference with voters in any manner whatsoever, and to assure fairness in the counting of ballots.

"9. The ballots used in the election are printed and furnished by the employees and the election conducted by employees eligible to participate in the election and selected by the executive committee. The ballots and all expenses of conducting the election have been borne by the Employees' Representative Committee since July 5, 1935, out of the funds contributed by the employees for expenses of the committee sent to Washington in 1929 and 1930. . . .

"13. That employees from each district will testify without contradiction: That he is an employee of the yard. That there was no interference in any way by the management in the selection of the repre-

# MICRO CARD

TRADE

MARK



# 22

# 39



# 1054

# 2

# 65



representative from his district. That he is a member of the Employees' Representative Plan. That no dues are charged. That he believes the majority of the employees in his district are satisfied with the Plan and with what has been accomplished under it and that the management has always been willing to negotiate with the Employees' Representative Committee in regard to any matter affecting men, wages, hours, and conditions under which they work, and that they are not aware of any action on the part of the management to discourage membership in any union by any officers or persons in a supervisory capacity in the shipyard."

When counsel for the Intervener rested (R. 146) he said, "In view of the stipulation that counsel have agreed to, Mr. Examiner, we rest." In its brief the Board ignored the stipulation and erroneously states that the Court below was in error in reciting these facts contained in the stipulation were uncontradicted, although the stipulation expressly stated, "\* \* \* The following is the evidence that will be submitted without contradiction for the Intervener with respect to the Employees' Representative Plan of the Newport News Shipbuilding and Dry Dock Company from which the Trial Examiner, The National Labor Relations Board or any Court may determine the questions in issue." (R. 75).

The Board in its brief (P. 43) seeks to repudiate this stipulation agreed to by its attorney before the Trial Examiner, and criticizes the Court below for stating: (1) During the life of the Plan that the Company had not in any way interfered with the



selection by the employees of representatives of their own choosing. (2) That all expenses of election under the Plan since 1937 had been borne by the employees.<sup>3</sup> (3) That the Respondent has not discouraged membership in any union. A casual reading of the stipulation will show that these along with other facts are exactly what the Board agreed would be uncontradicted.

#### **BOARD'S CONTENTION**

The National Labor Relations Board contends: One, because the Plan of representation of employees was discussed with the employer before it was put into effect back in 1927, when it was not unlawful to do this, it is a company sponsored organization from its inception and cannot be corrected or amended to make it qualify under the National Labor Relations Act. And two, that by reason of Articles VI and IX of the Plan of representation of employees, the organization is still objectionable. Even though these objectionable articles have since been eliminated.

For these reasons the Board contends that the affirmative action calling for disestablishment of the Employees' Representative Committee ordered by the Board should not have been eliminated by the Circuit Court of Appeals.

#### **INTERVENER'S CONTENTION**

Representatives freely and fairly chosen by a vast majority of employees to represent the employees in negotiations with the employer should not be disestab-

<sup>3</sup>—The stipulation was that all expenses had been borne by the Employees' Representative Committee since July 5, 1935 out of funds contributed by the employees (R. 76).

lished by an order of the Board because of some insignificant help rendered by the employer that has in no wise affected or interfered with the free, fair and unmolested selection of these representatives.

### ARGUMENT

The language of the Court below best states the position of the Employees' Representative Committee when it said, "The purpose of the Act will not be served by destroying an organization that is without doubt the chosen representative of the great majority of the employees, even though it may be thought that their decision to restrict their spokesman to American-born fellow workmen is unwise. To deny them the right is to ignore the express command of the statute."

The Court stated further: "But it was also important to take cognizance of the undoubted service that the organization had previously rendered to men and management alike, and of the insistence of the men upon the preservation of their organization, and to vote their sincere desire to eliminate in form as well as in substance every opportunity of the employer to a future share in the administration. That has now been accomplished and there is no longer any basis for the conclusion that the present plan is incapable of serving as a sincere representative of the employees for the purpose of collective bargaining."

"The National Labor Relations Act was designed to deal with the actualities of industrial life in this country, and to promote peace in relations between employer and employees by securing to employees the right, too frequently denied in the past, to or-

ganize and bargain collectively, with complete freedom and independence, through representatives of their own choosing." It is not questioned, but that the employees have had a free hand in the selection of their representatives.

If they want to elect as their representatives only fellow employees they have a perfect right to do this, and if they want to change their by-laws and rules to elect as their representatives outside persons they can easily do this by a change in the by-laws of their organization without protest or interference of any kind from the employer. The employer has nothing to do with this and in this respect the dissenting opinion is clearly wrong.

While the Board contended that Article VI and Article IX of the plan restricted the independence of the Committee in its capacity as a representative of the men, it was thoroughly understood by the Ship-building Company and the Employees' Representative Committee that the provisions of Article VI and Article IX were to apply to matters pertaining to the rights of the Company under the Plan, and in nowise applied or were intended to effect the independence of the Committee.

Because of the Board's contention that while this might be so as to past actions something different might be tried in the future, Articles VI and XI were amended by the Employees' Representative Committee to overcome this theoretical objection.

We have then an Employees' Representative Committee that has been fairly elected without interference or molestation by the employer, by an over-

whelming majority of the employees, to represent them as a collective bargaining agency in negotiations with the employer and which has functioned as such.

The question then arises, whether the Organization should be disestablished because of some insignificant assistance given it by the employer, such as the distribution of copies of the minutes through the company's mailing system, and permitting copies of the minutes to be copied on the company time?

It is submitted that the cease and desist order eliminates this inconsequential aid that has been given. To cause the disestablishment of this Organization is unreasonable, and would defeat the very purpose of the Act and is not justified by the evidence.

The Board takes the position that where it has found that an employer has given assistance to a labor organization of its employees that it has sole and unlimited discretion as to what affirmative relief it shall order.

In *National Labor Relations Board v. Fansteel Metallurgical Corp.*, 306 U. S. 240, the Court said: "The authority to require affirmative action to 'effectuate the policies' of the Act is broad, but is not unlimited. It has the essential limitations which inhere in the very policies of the Act which the Board invokes."

In *Consolidated Edison Co. v. National Labor Relations Board*, 305 U. S. 197, we find: "The employers' practices which were complained of, could be stopped without imperiling the interests of those who for all that appears had exercised freely their right of choice."

In *National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc., et als.*, 303 U. S. 261, 270, we find: "We may assume that there are situations in which the Board would not be warranted in concluding that there was any occasion for withdrawal of employer recognition of an existing union before an election by employees under section 9 (c), 29 U. S. C. A. 159 (c), even though it had ordered the employer to cease unfair labor practices."

It is clear from these cases that this Court recognizes that the National Labor Relations Board does not have unlimited authority in ordering affirmative relief.

No election was called for by the National Labor Relations Board to determine whether the majority of the employees desired the Employees' Representative Committee to continue to be their bargaining agency, although the Employees' Representative Committee themselves called for and held a referendum, after the report of the Trial Examiner of the National Labor Relations Board had been published. The result of that referendum was a vote of 3,455 for with 562 against a continuation of the Plan.

The Board does not contend that there is another labor organization or that there are other employees' representatives to look after the interest of the men. To disestablish this Employees' Representative Committee, overwhelmingly elected by the employees of the Newport News Shipbuilding and Dry Dock Company, leaves them without a collective bargaining agency.



It might be that they could join up with some national labor organization, or that they might go on without representatives. But it is not the purpose of the Act to force the employees into any particular kind of a labor organization, nor is it the purpose of the act to deprive them of their honestly, freely chosen representatives. A union limited to the employees of a single employer is as legal as any other. *Ballston-Stillwater K. Co., Inc., v. National Labor Relations Board*, 98 Fed. (2d) 758.

On the other hand, Section 9-A of the Act expressly provides, that representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of *all* of the employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment: Provided, that any individual employee or a group of employees shall have the right at any time to present grievances to the employer.

It is admitted by the stipulation that the representatives selected by the employees have always been freely and fairly selected, without interference or molestation on the part of the employer. In internal matters or matters affecting only the employees the management according to the agreement and understanding between the parties had no say or control. And the record is bare of any instance in which the management interfered or attempted to interfere with internal or solely employees' matters.

It was well understood by all parties concerned that the last sentence of Section 1, Article IV and Article IX of the Plan applied only to matters concerning the management.

For example, it will be conceded that the management ought to have some say as to whether it would be agreeable with them for the Employees' Representative Committee to vote the employees an increase in pay.

There is no evidence in the case to indicate that anything but a happy relationship existed between the employer and the employees. The record is entirely free from any evidence that anybody in authority in the Newport News Shipbuilding and Dry Dock Company discouraged membership in any union, hired spies of any kind to report to them on any union activities; or that gangsters or mobsters were hired to attack union organizers or to prevent any union organization; or there was any unfair labor methods or tactics or anti-unionism. The evidence (R. 48) that one of the most active members of the Employees' Representative Committee and the man that made all of the revisions from the original Plan down to the date of the hearing, and who was Chairman from 1930 to 1937, was a member of the International Brotherhood of Electrical Workers, affiliated with American Federation of Labor, and had been a member for a number of years; and when the Employees' Representative Plan was first put into effect the same man (Mr. Blanton) was Treasurer of the Central Labor Union, Treasurer of a local union; Secretary of the Union's policy committee, and Secretary of its building com-

mittee that was then engaged in acquiring a building. The record also shows the pattern makers were fully organized and affiliated with the American Federation of Labor (R. 144).

The Board in its brief devotes considerable time to complaining of the action of the Circuit Court of Appeals in considering as a part of the record certain documents certified to the Circuit Court of Appeals in accordance with the rules and regulations of the Board, but which were submitted after the Board had held its hearing.

When this case was argued before the National Labor Relations Board the Chairman of that Board took occasion to say to one of the counsel for the Company, when he was arguing that the rules of procedure had not been complied with, that the Board did not feel that it should adhere to the narrow rules of procedure that existed in feudal days. In its brief before the Court, however, the Board becomes very technical and complains very bitterly that the strict rules of procedure should have been followed by the Circuit Court of Appeals and that even though the Board certified as a part of the record certain documents, the Court should not have considered this part of the record.

The Board has a right to waive compliance with its rules. It did so when it made the supplemental certificate for the purpose of completing or correcting the record filed in the Court below. If the Board did not intend that the Court should consider the data, then the Board should have refused to make the certificate making the data "a part of the record."

Disregarding the fact that by its supplemental certificate it certified the data as "a part of the record," the Board contends (Brief 35-56) that the Court should not consider the data respecting the referendum because, it says, the data was submitted after the hearing before the Board, but before its decision. It is an undeniable fact that the Intervener submitted the data well in advance of the Board's decision and that the data was material as showing the employees' desire to retain the Plan.

It would not have the Court base its decision on the "very merits of the case" but on a rule of convenience which the Board at this late date seeks to invoke. It made no objection to the consideration of the data when the case was before the Court below.

There is no substance to the Board's contention that the data was submitted too late. The Board had not made its decision. This is made clear by the language of the Board's decision (R. 193), which clearly shows that the Board did consider the data. Otherwise it could not have ruled it inadmissible.

The Board's contention, made at this late date, is unfair to the employees, the Intervener here, and to the Court below. It is without merit.

The Intervener has no objection to the cease and desist order entered against the Company, but it does object to action of the Board ordering the disestablishment of its organization, who is composed of the duly, honestly elected representatives of the employees.

It is the contention of the Intervener that none of the Board's findings of fact adversely affecting the Intervener are supported by substantial evidence.

Section 10 (e) of the Act, 29 U. S. C. A., page 160 (e), provides that "The findings of the Board as to facts, if supported by evidence, shall be conclusive." Hence the Circuit Court of Appeals is not at liberty to review the evidence and make its own findings; but neither is it bound to accept findings based on evidence which merely creates a suspicion or gives rise to an inference that cannot reasonably be accepted. The statute means that the Board's findings are conclusive if supported by substantial evidence. *Appalachian Electric Power Co. v. National Labor Relations Board*, 4 Cir., 93 F. 2d 985, 989; *National Labor Relations Board v. Thompson Products*, 6 Cir., 97 F. 2d 13, 15; *National Labor Relations Board v. Lion Shoe Co.*, 1 Cir., 97 F. 2d 448. This is the yardstick to be applied to an examination of the record.

If the Board honestly questioned the result of the referendum held on June 7, 1938, and the election of June 14, 1938, then it should have, in all fairness, and under the expressed provisions of Section 9 (c) of the Act, held an election to determine the wishes of the employees. This the Board did not do. This we challenge it to do.

#### CONCLUSION

The decision of the Circuit Court of Appeals for the Fourth Circuit is correct and should be affirmed.

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PERCY CARMEL,  
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*of Counsel.*



# SUPREME COURT OF THE UNITED STATES.

No. 20.—OCTOBER TERM, 1939.

National Labor Relations Board,  
Petitioner,  
vs.  
Newport News Shipbuilding & Dry  
Dock Company.

On Writ of Certiorari to  
United States Circuit  
Court of Appeals, Fourth  
Circuit.

[December 4, 1939.]

Mr. Justice ROBERTS delivered the opinion of the Court.

In a case duly instituted and heard, the National Labor Relations Board issued an order,<sup>1</sup> pursuant to the provisions of Sec. 10(c)<sup>2</sup> of the National Labor Relations Act, requiring the respondent, Newport News Shipbuilding & Dry Dock Company: (1) to cease and desist from (a) dominating or otherwise interfering with the administration of the Employees' Representative Committee, a labor organization,<sup>3</sup> or the formation or administration of any other labor organization of its employees; (b) from interfering with, restraining, or coercing its employees in the exercise of the right guaranteed them by Sec. 7<sup>4</sup> of the Act. The order further required the company (2) to take affirmative action, namely: (a) to withdraw all recognition from the Committee as the representative of any of its employees for the purpose of dealing with the company concerning labor conditions and wages, and completely to disestablish the Committee as such representative; (b) to post copies of the order throughout the plant; (c) to maintain said notices for thirty days; and (d) to notify the Board's Regional Director of the steps taken to comply with the order.

The order was based upon findings that the respondent had dominated and interfered with the formation and administration of the

<sup>1</sup> 8 N. L. R. B. 866.

<sup>2</sup> 49 Stat. 449, 454; 29 U. S. C. Supp. IV, Sec. 160(c).

<sup>3</sup> The Committee was granted leave to intervene, produced evidence, and participated in the argument before the Board, and was heard in the court below and in this Court.

<sup>4</sup> 49 Stat. 449, 452; 29 U. S. C. Supp. IV, Sec. 157.

Committee, had contributed to it financial and other support, and was still dominating and interfering with the Committee, contrary to Sec. 8(1) of the Act.<sup>6</sup>

The Company petitioned the Circuit Court of Appeals for review. The Board answered praying that the court dismiss the company's petition and decree enforcement. The court held that the Board had jurisdiction of the cause, but that its holding that the company had dominated and interfered with the formation and administration of the Committee was without support in the evidence. The court decreed that Section 1(a) and (b) and Section 2(b) (c) and (d) of the Board's order should be enforced but that Section 2(a), which required the withdrawal of recognition of the Committee and its disestablishment as a representative of the employees, should be stricken from the order. We granted certiorari because of asserted conflict with decisions of this court.<sup>7</sup>

The respondent does not press the claim advanced in the court below that the Board lacked jurisdiction. The sole issue here joined is as to the propriety of that portion of the Board's order which constrained the respondent to withdraw recognition of the Committee and to disestablish it as the bargaining representative of the employees. Resolution of the issue requires that we determine whether the Board's ultimate finding of domination and interference by the employer has substantial support in the evidence.

The Board's subsidiary findings of fact are not the subject of serious controversy. The respondent attacks the ultimate conclusion of fact as unjustified by the subsidiary findings and further contends that the conclusion could not have been reached had not the Board ignored and refused to find other relevant facts which were either stipulated or proved without contradiction.

The Board's findings were to the following effect: In 1927, in cooperation with its employees, the respondent put into effect a plan of employee representation known as "Representation of Employees". The preamble of the plan stated that its purpose was to give employees a voice in respect of the conditions of their labor and to provide a procedure for the prevention and adjustment of future differences. Under the plan the employees were to elect representa-

<sup>5</sup> 49 Stat. 449, 452; 29 U. S. C. Supp. IV, Sec. 158.

<sup>6</sup> The complaint also charged that the respondent had discharged certain employees for union activity and had thus violated Sec. 8(3) of the Act but the Board dismissed this charge.

<sup>7</sup> National Labor Relations Board v. Pennsylvania Greyhound Lines, 303 U. S. 261; National Labor Relations Board v. Pansteel Metallurgical Corp., 306 U. S. 240.

tives each of whom was paid \$100 per year for services as such. No one holding a supervisory position was eligible to serve as a representative or to vote for a representative. Administration of the plan was vested in certain joint committees each of which consisted of five elected representatives and not more than five representatives chosen from amongst the employes by the management. There was provision for a Management's Representative whose function was "to keep the management in touch with the representatives and represent the management in negotiations with their officers and committees." A provision calling for the arbitration of differences was to become operative only upon concurrence of the respondent's president.

Amendment of the plan could be made only by the affirmative vote of two-thirds of the full membership of the Joint Committee on Rules or of a majority of all the employes' representatives and all the representatives of the management, at an annual conference. The plan set forth that independence of action of elected representatives was guaranteed by permitting them to take questions of discrimination to any of the superior officers, to the Joint Committee, and to the president of the company. There was no provision for the payment of dues.

The original plan was revised in 1929, 1931, 1934, 1936, and 1937.

By the 1931 revision, which was not materially altered until 1937, a General Joint Committee was set up in lieu of several joint committees theretofore constituted, and two representatives were to be elected by the employes in each department while the respondent was to appoint an equal number of management representatives, a majority of each class of representatives constituting a quorum. The annual remuneration to be paid elected representatives by the company was reduced to \$60.00. The secretary of the General Joint Committee was paid \$5.00 monthly by the company. An Executive Committee was also established constituted of five elected employe representatives and five representatives of management.

Elections were arranged for by the management representatives but, in so far as possible, were conducted by the employes themselves.

A procedure was established for the adjustment of individual employe grievances, whereby, in event of failure of settlement, notice was to be given to the president of the company. Under the

revised plan the General Joint Committee met monthly to take action upon matters presented by the Management Representative or by employe representatives or subcommittees; but finality of the action of the General Joint Committee was dependent upon approval by the respondent's president. Amendment of the plan, which could be accomplished by a two-thirds vote of the entire General Joint Committee, became effective when approved by the president of the company.

The last revision made in May 1937, after the validity of the National Labor Relations Act had been sustained by this court, originated in the General Joint Committee, one-half of whose members represented the interests of the respondent. The amended plan was referred to the Executive Committee, similarly constituted, and to the elected employe representatives, respectively. After announcement by the Management Representative that the revision was acceptable to the respondent it was adopted by the General Joint Committee. The personnel manager, and the general manager of the respondent, took part in the revision of the plan. The secretary of the Committee testified that this revision was undertaken in order to bring the plan within the letter, as well as within the spirit, of the Act.

The two principal changes made were the elimination of payment of compensation by the respondent to elected representatives of the employes and the substitution of an Employees' Representative Committee, composed solely of employe representatives elected by employes, for the former General Joint Committee and the Joint Executive Committee. The revised plan provides that action of the Employees' Representative Committee "shall be final and become effective upon agreement by the company"; and, further, that any article of the plan may be amended by a vote of two-thirds of the entire membership of the committee; and "amendments shall be in effect at the time specified by the Employees' Representative Committee, unless disapproved by the company within fifteen days after their passage."

The grievance procedure permits the presentation of a grievance to the respondent's personnel manager, or its general manager, in the event no settlement has theretofore been effected.

Upon the basis of these findings the Board concluded that, from the inception of the plan in 1927 until its final revision in 1937, the respondent dominated, assisted, and interfered with the adminis-

tration of the labor organization; and that the method followed for amendment of the plan in 1937, and the provisions of the final revision, left the company still in the position of dominating and interfering in the formulation and administration of the plan, contrary to the provisions of Sec. 7 of the Act. The Board held that the Committee is, in the circumstances, incapable of serving the employes as their genuine representative for the purpose of collective bargaining.

The respondent criticises several of the findings as without support or contrary to uncontradicted evidence. We do not stop to consider these contentions, since, without such findings, there would still be a basis in the record for the Board's conclusions.

The principal contention of the respondent is that the Board ignored uncontradicted facts and refused to make findings respecting them. The Board replies that it did not ignore these facts, but omitted to find them because they were immaterial to the pivotal issues in the case. It is uncontradicted that labor disputes have repeatedly been settled under the plan; that since 1927 no labor dispute has caused cessation of activities at the respondent's plant; that overwhelming majorities of the employes have participated in the election of representatives; that the company has never objected to its employes joining labor unions; that no discrimination has been practiced against them because of their membership in outside unions; and that neither officials nor superior employes not eligible to vote in the election of employes' representatives, have interfered, or attempted to interfere, or use any influence, in connection with the election of representatives.

*Before* ~~After~~ the Board's decision and order had been promulgated a referendum was held at which a sweeping majority of the company's employes signified, by secret ballot, their satisfaction with the plan as revised in 1937 and their desire for its continuance. Counsel for the Committee requested the Board to certify these facts to the Circuit Court of Appeals as part of the record before the court. The Board, though not bound so to do, embodied these facts in a supplementary certificate. It now takes the position that the only proper way to bring these additional facts to the attention of the reviewing court would have been by application to the court to remand the cause for further findings, and as this was not done, the certificate was irregular and should not have been considered. We are unable to agree with this contention. We think the Circuit



Court of Appeal, cannot be convicted of error in accepting the Board's supplemental certificate.

The Board urges that, notwithstanding the facts on which the respondent relies, the structure of the Committee, under the 1937 plan, renders the organization incompetent to meet the requirements of the National Labor Relations Act; and further that, if its fundamental law were free from defect, the history of its organization and administration would require that it be disestablished as the bargaining agency of the employees.

Prior to the adoption of the Wagner Act the plan did not run counter to any federal law, either in conception or administration. The respondent, however, concedes that sundry features of the plan, as then formulated, conflict with the provisions of the statute. Both employer and employees so recognized when they undertook the revision of 1937 for the purpose of bringing the plan within the spirit and the letter of the Act.

The Board has concluded that the provisions embodied in the final revision, whereby action of the Committee requires, for its effectiveness, the agreement of the company, and whereby amendment of the plan can become effective only if the company fails to signify its disapproval within fifteen days of adoption, still give the respondent such power of control that the plan is in the teeth of the expressed policy and the specific prohibitions of the Act. The respondent argues that these provisions affect only the company and not the employees; that, in collective bargaining, there is always reserved to the employer the right to qualify or to reject the propositions advanced by the employees. Whatever may be said of the first mentioned provision, this explanation will not hold for the second. The plan may not be amended if the company disapproves the amendment. Such control of the form and structure of an employee organization deprives the employees of the complete freedom of action guaranteed to them by the Act, and justifies an order such as was here entered. The court below, in its opinion, states it was advised in a brief after the hearing in that court, that the plan had been amended by striking out the provisions in question. It concludes, therefore, that their previous existence is immaterial. The statute expressly deprives the reviewing court of power to consider facts thus brought to its attention. The case must be heard on the record as certified by the Board. The appropriate procedure to add facts to the record as certified is prescribed in Section 10(e) of the Act.

But we think that if the record disclosed such an alteration of the plan, the order of the Board could not be held erroneous. The Board held that, where an organization has existed for ten years and has functioned in the way that the Committee has functioned, with a joint control vested in management and men, the effects of the long practice cannot be eliminated and the employees rendered entirely free to act upon their own initiative without the complete disestablishment of the plan. On the record as made we cannot say this was error.

While the men are free to adopt any form of organization and representation whether purely local or connected with a national body, their purpose so to do may be obstructed by the existence and recognition by the management of an old plan or organization the original structure or operation of which was not in accordance with the provisions of the law. Sec. 10(c) was not intended to give the Board power of punishment or retribution for past wrongs or errors. Action under that section must be limited to the effectuation of the policies of the Act. One of these is that the employees shall be free to choose such form of organization as they wish.

As pointed out in *National Labor Relations Board v. Pennsylvania Greyhound Lines*, 303 U. S. 261, disestablishment of a bargaining unit previously dominated by the employer may be the only effective way of wiping the slate clean and affording the employees an opportunity to start afresh in organizing for the adjustment of their relations with the employer. Compare *National Labor Relations Board v. Fansteel Metallurgical Corp.*, 306 U. S. 240, 262.

The court below agreed with the respondent that, as the Committee had operated to the apparent satisfaction of the employees; as serious labor disputes had not occurred during its existence; and as the men at an election held under the auspices of the Committee had signified their desire for its continuance, it would be a proper medium and one which the employer might continue to recognize for the adjustment of labor disputes. The difficulty with the position is that the provisions of the statute preclude such a disposition of the case. The law provides that an employee organization shall be free from interference or dominance by the employer. We cannot say that, upon the uncontradicted facts, the Board erred in its conclusion that the purpose of the law could not be attained without complete disestablishment of the existing organization which had been dominated and controlled to a greater or less extent

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by the respondent. In applying the statutory test of independence it is immaterial that the plan had in fact not engendered, or indeed had obviated, serious labor disputes in the past, or that any company interference in the administration of the plan had been incidental rather than fundamental and with good motives. It was for Congress to determine whether, as a matter of policy, such a plan should be permitted to continue in force. We think the statute plainly evinces a contrary purpose, and that the Board's conclusions are in accord with that purpose.

The decree must be reversed and the cause remanded for further proceedings in conformity to this opinion.

*So ordered.*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*



# MICRO CARD

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